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THE CONTROVERSY IN CANADA OVER

The Control of the Carriers

A demonstration of the theory that the most effective regulation of public service corporations lies in competition between government-owned and privately owned companies

BY HERBERT COREY

SOME people may think the tale of the Canadian National Railway System and the Canadian taxpayer is tragic. When I began to dig into it it seemed to me the most gorgeous bit of drama in the business world. But I have the cosmic point of view and the deeper I got the funnier was the story.

And anyhow I do not pay taxes in Canada.

Here are the broad outlines:

THERE is a move afoot to take the Canadian Pacific Railroad System away from its private owners because the cost of competition with it is becoming positively ruinous to the government-owned Canadian National Railway System. The profits of the Canadian Pacific would be used to fill in the Canadian National bog.

I have the same right to go for a ride in a dream boat that have the proponents of government ownership. It seems likely to me that precisely this same thing may happen wherever government ownership is embarked upon. Privately owned corporations will be seized to bolster up the shaky fabrics owned by the government. William Jennings Bryan had the idea years ago. He said that if he could once get the government to buy one single

railroad it would soon drive the other roads into government hands. Stockholders do not put up as uncomplainingly as do taxpayers.

In face of all the evidence I maintain that this is a funny story.

TWENTY years ago Canada had one railroad system and one railroad mess. The Canadian Pacific was one of the great railroads of the world. Its service was as nearly perfect as railroaders of that day knew how to make it; its common stock paid 10 per cent and ranked as an investment; it had done more for the development of Canada than any other single agency and it was—as it is today—the greatest single taxpayer in Canada.

In opposition to it was a potful of little gone-to-hell roads and some well-built roads badly placed and another better road that had been rooked by its London directors for the benefit of absentee stockholders. The railroad world knew the Grand Trunk as the Grand Junk. Government loans and guarantees covered it like a blanket. Because it could not possibly live in that state and because the Canadians could not do without it, the taxpayers of the Dominion took it over and added the other roads to it and created a great transcontinental system with 23,000 running miles of track.

THE total deficit of the Canadian National Railway System in its net income account was $68,279,769 in 1930.

No matter. The taxpayers footed the bill. Government-owned property does not pay taxes to the government that owns it. I did not find any charge for depreciation of the Canadian property in the report for 1930. Perhaps depreciation is somewhere hidden in the bookkeeping. If it is not, then a fair estimate of the accrued depreciation on the Canadian side of the border might be another $32,000,000. That is mere guesswork, because the depreciation of the property which lies on the United States side comes to almost $15,000,000. Under the Interstate Commerce Commission's ruling depreciation must be accounted for on this side. But I shall not add the $32,000,000 undiscovered depreciation to the net income deficit of $68,000,000 in 1930 because I am at heart a good fellow. I do not propose to wave a hundred million dollar yearly deficit in the faces of the Canadians. Maybe it isn't true.

And there are only ten million Canadians.

Because the Canadian National Railway System—hereinafter to be referred to merely as the National—has been able to fire its fine new engines with Canadian dollar bills, it has run its competitor ragged. The Canadian Pacific now pays but 1¼ per cent on the common. Its stock market price is down at the foot of the column. It continues to be the largest taxpayer in Canada. A great share of the taxes it pays annually goes to the upkeep and expansion of the National, and the National is making an avowed and open fight upon the business and revenues of the Pacific. Both roads have been forced into otherwise needless extravagances in consequence.

AT this point Alice comes out of Wonderland and begins to do her tricks in full view of the audience.

On the face of the returns, the privately owned road has been a bit too good for the government-owned road. The Canadian Pacific has been able to meet the competition of the National —and it has been magnificent and lavish—and still continue to pay a small dividend. The cost of the attempt to raid the Canadian Pacific has been so great that the government ownershippers are beginning to have chills instead of fever. Their plan for putting an end to the drain on the Dominion's treasury is to put the Dominion's largest taxpayer out of business and to set up two tax-eaters instead of one.

"One side will make you grow taller and the other side will make you grow shorter," as the Caterpillar said to Alice. But the cream of the jest is still to be heard.

There is not a proponent of government ownership on the continent, from a prune box ranter on Union Square to Joseph Bartlett Eastman, the dominating member of the Interstate Commerce Commission, who does not maintain that the Canadian National Railway System is the finest proof that government ownership and operation can be made a practical success. Its annual deficit means nothing to them. My own feeling is that it is a demonstration of the soundness of the philosophy to which one of my early preceptors adhered.

"And how do you account for your success, Mr. Marsh?"

I did not really care how Mr. Marsh accounted for his success. He was the owner of a saloon and faro bank in Casper, Wyoming; it was a wild and stormy night, and although Mr. Marsh did not know it, I was planning to offer the capacity of the debtor theory to him when it came time to settle for a few refreshments I had had during the evening. The same scheme has had eminent European endorsement lately. I felt that if Mr. Marsh could be interested in a success interview the later negotiations might be conducted upon a loftier plane:

"That's easy," said Mr. Marsh briefly. "These dumb cowpunchers will always stay longer to lose than they will stay to win."

IF, as I see it, the assumption of the debts and responsibilities of the Canadian National System by the Canadian taxpayer has been a winning proposition, then a case of Asiatic leprosy is a maiden blush. It is not worth while going into the history of the one hundred railroads and other corporate entities that make up the National System. Books have been written on it. Long before 1920 the various roads were, for the most part, faced with bankruptcy. The government of Canada dared not propose an abandonment of the failed lines;

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voters and taxpayers alike would protest. During the years, too, the Dominion had acquired a perfectly appalling investment in the various roads. Subsidies and guarantees had been granted lavishly for the dual purpose of opening new country to settlers and setting up opposition to what would otherwise have been the Canadian Pacific's monopoly.

Nor do I propose to go into the details of the transactions by which the Dominion became the partial owner of the one hundred railroads and other corporate entities. They would only be mystifying. Even the men who handled them could not agree. Two members of the arbitration commission which had been summoned to decide whether the Grand Trunk stockholders should be allowed more than $62,000,000 for their equity turned thumbs down. William Howard Taft, then chief justice of the Supreme Court of the United States, said a further sum of $48,000,000 was due them and that the road was essentially solvent and could in time pay its debts. These facts are of no importance now.

The fact that is important is that, solvent or not, the Dominion agreed to assume the ownership and direct the operation of this tangle of big and little, good and bad roads.

Once this decision was reached the Dominion went about the job in a workmanlike way.

ONE of the foremost railroaders in the world in 1920 was Sir Henry W. Thornton. This statement does not rate him too highly. He began life in the ranks in the United States and displayed so much initiative and ability that his superiors were compelled either to promote him or to fire him. They always promoted him. When the railroads of Great Britain got into the hopeless muddle in the early months of the World War that the roads of the United States got into two years later, it was seen that a super-railroader was needed and Thornton was sent for. He was then general superintendent of the Long Island railroad. It may be imagined with what joybells the British railroad managers greeted this American who had been called over to teach them their business. Thornton faced the kind of coöperation a turkey gets from a farmer.

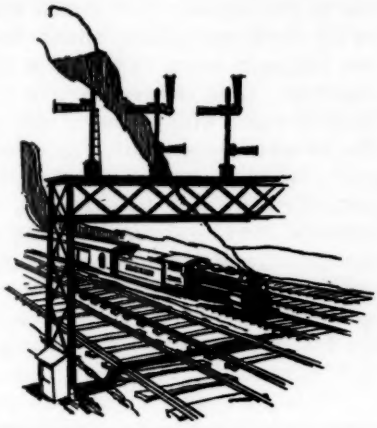
"I know what I am up against," he said. "All I ask is a sporting chance."

That appealed to the Britons and he got it and made good. Later he was given charge of all railroad transportation on the continent during the war and made good. Those who do not like him (and it may be admitted that the vision of Sir Henry Thornton getting off a chromium-plated Canadian National train *de luxe,* to the music of the Kilties' band, the tail of every kilt swinging and snapping in unison with every other tail, the councilmen of the about-to-be-visited city standing in attitudes of reverent attention . . .).

That sentence is getting too long. What I mean is that this vision has driven strong men mad. But when they say that Thornton is not a practical railroader but that he is a handshaker, backslapper, and bull roarer *par excellence* I think they are somewhat goofy. Railroads are not handshaken into condition. Before he came to Canada in 1922 to take his

When the Government Competes with Private Companies

"To justify the Canadian National in its greatness it was obvious that business must be taken from its competitor, the privately owned Canadian Pacific. The same thing is to be seen on our side of the line. The governmental-owned Inland Waterways Corporation is being compelled to rook the privately owned railroads. Otherwise, it would die for lack of business."



$50,000 a year job, Great Britain had forgotten that he was a Yankee and had given him titles and ribbons and was bragging about this British railroad man who was about to go to America to show America the real British stuff.

A CONDITION precedent to Thornton's acceptance of the job of president of the National was that politicians should keep their hands off him.

No one but Thornton knows how completely this pledge has been kept, but it is fairly certain that he has not kept his hands off the politicians, for he has never been denied the funds he has needed to make a series of more or less shot-to-pieces roads over into a great system. The primary problem was in two parts. First he must make a railroad. Then he must get the lion's share of business away from the privately owned Canadian Pacific Railroad. Neither was easy doing, but he had at least one immense advantage over his competitor.

He was playing with taxpayers' money.

IN 1920, in the pre-Thornton era, one cent hauled a freight ton .86 mile. In 1930 it hauled the ton 1.15 miles.

In 1920 the daily labor of the average employee moved one ton 438 miles. In 1930 the same labor accomplished 579 miles.

In 1920 one pound of coal moved one ton 1.7 miles. In 1930, 3.2 miles.

In 1920 the average freight train was 1,081 tons. In 1930 it was 1,427 tons.

In 1920 there were 2 miles of feeder to one mile of main line. In 1930 there were 3¼ miles of feeder. Main lines had been coördinated and 225 miles of duplicated main line had been abandoned and light rails replaced by heavy and better ties put in and the roadbed ballasted.

Wooden trestles were replaced by steel bridges; automatic signals were

installed and modern heavy equipment put in everywhere. The fastest train in the world over a like distance is on the National system. Passengers may telephone from moving trains and keep in touch with the news sent out by three radio systems. A nation-wide telegraph system was evolved and the increasing tourist traffic of Canada catered to by a chain of great hotels. The Hotel Scribe was bought in Paris for the accommodations of patrons and passenger liners added to the existing fleet. The taxpayers paid for all these things;

"It is your system," said the government of the Dominion of Canada to the taxpayers. "Let us get together to make our system great."

For the moment two facts should be emphasized:

The 23,000 miles of the Canadian National have been welded into a very great system indeed.

To justify it in its greatness it was obvious that business must be taken from its competitor, the privately owned Canadian Pacific.

The same thing is to be seen on our side of the line. The government-owned Inland Waterways Corporation is being compelled to rook the privately owned railroads. Otherwise it would die for lack of business.

THORNTON did a fine job, as was expected of him. He had been hired to get the business and there was only a certain amount of business gettable and only one competitor from which to get it.

In the good year of 1928 both railroad systems made money. The National turned an operating deficit of $32,000,000 in 1920 into an operating surplus of $54,860,000. That was the peak year for all roads. When the pinch came in 1930 the National did not do so well. I find in its report for that year that the net income deficit "before interest on government advances" was set at $35,585,894 for all lines. Against this Dwight Moody makes the significant statement in a recent issue of the *Wall Street Journal* that:

> "On the basis of the 1930 operations, the net payment to the government by the Canadian Pacific (if that privately owned system had been taken over by the Dominion) would have exceeded $35,000,000."

The privately owned system with its 14,000 miles made $35,000,000 in this bad year and the government-owned system of 23,000 miles lost $35,000,000. The conclusion I draw from this—(I have drawn it before and I shall go right on drawing it because it has such a fascinating wickedness)—is that the proponents of government ownership know on which side the butter goes when they propose to seize the privately owned system. The cost of competing with it is becoming excessive for the Canadian National. The taxpayers will continue to pay, of course. Taxpayers always pay. But they are whining as they open up the old squirrel skin.

The plan, therefore, is to seize the successful road for the benefit of the unsuccessful road. The profit formerly made by the private owners will be taken to chunk up the deficit in the government-owned system. If I tried to operate on my neighbor's garden in that same way he would fill my hinder end full of bird shot.

IT is quite possible there will be no effective opposition by the stock-

holders of the Canadian Pacific System. The taxpayers' money has built up the Canadian National until competition with it effectively may soon be suicidal. When the Canadian Pacific needs fresh money it must go into the market and sell bonds. When the National needs money Sir Henry sounds the bagpipes and Parliament makes an appropriation. Dwight Moody writes that the National will need one hundred million dollars more this year. And there are but ten million Canadians! And not all of them are taxpayers.

The proponents of government ownership urge that it is not fair to charge against the present Canadian National System the carrying costs of the various operations of the past by which the Dominion government financed its elements. It must be conceded, however, that the taxpayer is still paying.

To my prejudiced mind the fact that not in the history of government interest in railroading in Canada is there one record of money coming back to the taxpayer is fairly good evidence that the taxpayer always will pay when his government gets into business.

Now let us get to the milk in this coconut:

The 1930 report of the National system shows, as might be expected, that the operating income of 1930 is less than that of 1929. Here are the figures for the entire system including the eastern lines:

Total operating income 1930 .. $15,920,310
Total operating income 1929 .. $36,862,655

Evidently Sir Henry Thornton got the business he was sent for. Even in the poor year of 1930 the National had the immense sum of $15,920,310 for operating income. Unfortunately the net income deficit in 1930, before any charge is made for interest due the Dominion government and the various provinces, is the far more immense sum of $35,585,894.

Any chartered accountant can take any given set of figures and make them lay eggs to order. Therefore, I shall not attempt to draw any morals from the statements made in the 1930 report, but shall merely quote the statements. To that net income deficit of $35,585,894, then, is to be added the sum of $32,693,875—

"For accrued interest on the debts owed by the National system to the Dominion of Canada and the various provincial governments."

It seems to appear that the breath-taking total of $68,279,769 is the actual out-of-pocket loss of the National system for the year 1930. That was the result after a most successful year of railroading, as success was measured in 1930. Thornton

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offset a reduction of more than $46,000,000 in gross revenue by a cut of more than $26,000,000 in expenses. The net earnings of the system were $26,510,937 in 1930 against $46,818,025 in 1929. He reduced his freight car hire in 1930 by more than $3,000,000. He had the sound sense and courage to go right on with his program of expansion and betterment. In addition to other new construction he began work on new hotels at Vancouver and Saskatoon.

The taxpayer paid, of course. That is a basic condition in government ownership. But at the risk of seeming to be somewhat bright-eyed about Thornton I must repeat that there are few railroaders who could better his performance. And I must emphasize the fact that in 1929 the net earnings were $46,818,025. That was a tremendous performance. It was only made possible by the fact that he was not compelled to consider the costs of improvement. I read in one of the National's publications that the "capital charges since 1920 have totaled $437,967,226." This new capital has been employed largely for the creation of a system which can compete on more than even terms with the privately owned Canadian Pacific system, which is, as I have said, the largest taxpayer in the Dominion.

The cost of creation did not bother anyone. The taxpayer paid.

I DO not know whether to the out-of-pocket loss in 1930 of $68,279,769 should be added a further indeterminate item for depreciation. Earlier in this narrative it was suggested that this be set at $32,000,000, but this is pure guesswork. All that can be discovered in the 1930 report is that for the portion of the 23,000 miles of the Canadian National System which lies in the United States a charge for depreciation has been made—under the rules of the Interstate Commerce Commission — amounting to $14,943,649. There is no suggestion anywhere that a charge for depreciation on the Canadian side of the border has been made. It may be buried somewhere in the bookkeeping, but not even a marker has been set at its head. If no charge for depreciation in Canada has been made, then the guess of $32,000,000 for depreciation on the Canadian property can be defended. It checks, in a way, with Dwight Moody's statement that this year the Dominion parliament must grant $100,000,000 to the National.

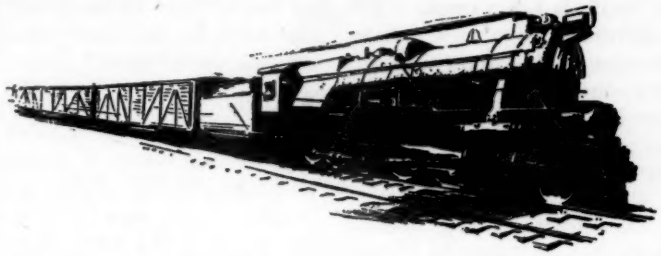
BUT there are other interesting figures in that 1930 report.

The total profit-and-loss deficit of the Canadian National System is set at $579,755,822. That is about $58 for each of the ten million Canadians.

The total value of the assets is $2,344,690,737.

The total profit-and-loss deficit is, then, about one fourth of the book value of the system.

The deficit has a way of mounting steadily. In 1930 $68,000,000 were tacked to it. In good years it might be cut down, but in the meantime new capital is to be put in, according to the National's own statement. And still there is no certainty that the new National can compete with the Canadian Pacific and make money at it. In 1930 the Canadian Pacific was still able to pay a dividend. A small one,



"THE Canadian Pacific is now the chief taxpayer of Canada. The taxes it has paid have gone far toward keeping its chief competitor alive. If it is seized by the government it will stop paying taxes and go to eating them."

it is true, but nevertheless a dividend. The National system went in the hole anywhere from $68,000,000 to $100,000,000; the figure depends on whether or not a charge for Canadian depreciation was actually made.

IT is no wonder that the government ownershippers want to take over the Canadian Pacific. The cost of operation can be cheapened, they say. The train services can be lessened. It is true that this is not exactly the argument one hears in other quarters for other proposed experiments in government ownership, but we shall not be captious about that. The profits now being made by the Canadian Pacific can be poured in the Canadian National's hole. There is a vague suggestion that the Canadian Pacific common stock may be put on a 4 or 5 per cent basis and be guaranteed by the government. In ordinary good times the Canadian Pacific common paid 10 per cent. There is, of course, this one gleam of satisfaction to the stockholders of the Canadian Pacific.

THE Canadian Pacific is now the chief taxpayer of Canada. The taxes it has paid have gone far toward keeping its chief competitor alive. If it is seized by the government it will stop paying taxes and go to eating them.

"The King was saying: 'I assure you, my dear, I turned cold to the very end of my whiskers.'

"To which the Queen replied: 'You haven't got any whiskers.'

" 'The horror of that moment,' the King went on, 'I shall never, never forget.' "

THERE are other interesting figures in that 1930 report. The capital stock held by the Dominion in the National system amounts to $265,628,338, but the loans from the Dominion mount up to $604,406,239 on which $322,155,901 interest has accrued. I assume that taxes are not paid on that part of the system owned by the Dominion or that if they are, one hand washes the other. The item of $5,694,012 "taxes accrued"—I

shall suggest that word "accrued" to Amos 'n Andy; it has a comic sound —may, therefore, be a mere matter of bookkeeping. The taxes will join the other accruals. In the background is another bit of good news for the Canadian taxpayer.

One billion dollars' worth.

THE assumption of any licensed pawnbroker or dealer in victuals would be that it will be a long, long time before the National pays off the loans already secured. The interest seems to go right on accruing, which is not a favorable sign for the payment of the principal. Very well, then. In this same 1930 report I make this interesting discovery:

> "Guaranteed by the Dominion of Canada and the Provinces of Ontario, Manitoba, Saskatchewan, Alberta, and British Columbia—
> "$926,616,482.
> "$40,620,964 interest accrued in 1930.
> "$34,675,968 interest accrued in 1929."

Now I begin to be stuck. The figures are too ripe and juicy for me. But those who believe that government ownership is a foretaste of paradise are invited to take a little nibble at them. Upon the loans guaranteed by the Dominion and the Provinces in two years the sum of $75,296,932 in unpaid interest accrued. That seems clear enough. But I find that upon the loans of $604,406,239 made by the Dominion the sum of $64,131,594 "interest accrued" in the same two years. In my language there is a difference between a loan and a guarantee—even if the guarantee will in the end become a loan. Then it would appear that in two years the sum of $139,428,526 due and unpaid interest has accrued on loans and guarantees made by the Dominion and provincial governments.

WELL—of course—that is impossible. It is not possible for any organization except a government to owe that much interest money. But because I am a poor boy and trying to get along I do wish that someone would tell me in short words just what has happened.

Does the Canadian National System actually owe that much accrued interest on loans and guarantees? And if that or any considerable part of it is the case, wherever do the government ownershippers find support for the theory which every one of them, from Joseph Bartlett Eastman down to anybody, holds that the National is a grand example of successful government ownership?

And no one need tell me that I am not playing fair because I am charging against the National the sums borrowed or guaranteed from the Dominion of Canada in past years. I'll quote Mr. Coolidge:

"They hired the money, didn't they?"

If it was a mistake then, what certainty is there that government participation in railroad affairs will not be a mistake now?

But I am not really interested in getting a reply to that query. The truth is there is only one question I really want answered. What I want to know about government ownership is just this:

"What happens to the taxpayer?"

The Effect of the Service Charge Upon the "Small User"

Some of the real and some of the fancied justifications for one of the most controversial of the elements in the rate schedules of many of the gas and electric utility companies.

By DR. JOHN BAUER

In spite of the fact that the service charge has been widely accepted throughout the country as a constituent part of gas and electric rate schedules, its desirability and justification are still questioned, especially by large masses of consumers in urban communities. Although it has been supported by complicated cost analyses, in most cities it is not justified by the costs involved in furnishing service under varying conditions. Instead of more equitable treatment as between different classes of consumers, it results mostly in discrimination against the mass of small users.

Without attempt at being too technical, the service charge may be defined as a fixed monthly charge to a consumer which is based neither on the amount of service, nor on the extent of his total capacity to receive service, but on the sheer fact that he is a potential consumer, attached to the system, and capable of being served. It is a separate charge for service as such, as distinguished from a charge for gas or electricity as such.

In a number of instances, perhaps the majority, the charge in form as well as substance would fall within the definition of service charge given above. A domestic consumer is charged, for example, $1 or $1.50 monthly, in addition to which there is a charge for gas or current, if taken during the month, at a given quantity rate. Here the initial charge of $1 or $1.50 is in form, as well as substance, a service charge.

In other cases, however, the charge is really a service charge, but in form would, strictly speaking, seem to fall short of our definition. Thus, we find cases where, for example, a domestic consumer is charged $1 or $1.50 for the first 100 cubic feet of gas or less, and for each additional 100 cubic feet, say, 10 cents. While in form this might be said to be a minimum bill, or the rate for the first block, in substance it really is a serv-

ice charge. The amount of gas allowed with the initial charge is so slight compared with the charge per unit in the follow-up block, that it cannot be considered merely a minimum bill for which an equivalent amount of the commodity or service is given. Nor can it be considered as the rate for the first block, because practically the assumed block is negligible compared with the real blocks to which the follow-up rates are applied.

In this article we shall refer to the substance of the service charge, whatever form it may assume in given rate schedules.

To simplify and clarify the discussion, we shall assume that so far as total revenues are concerned, they are attainable either with or without the service charge under a given amount of consumption. So far as the immediate interests of the utility in question are concerned, it makes no difference whether a service charge with lower follow-up rates are to be in force, or higher rates per unit without a service charge; either is practicable, and will yield the necessary total revenue to the utility.

The reasons advanced by the proponents of the service charge may fairly be said to be twofold; the principal, and the one that has been more clearly formulated, is that it costs that much to have a consumer attached to the system, regardless of the amount of gas or electricity he uses. If that be the fact, then if all the costs are based upon quantity of gas or electricity used, the small or convenience customer is carried at a loss, which has to be recouped in higher charges than cost to those who regularly make greater use of the facilities.

A second, and less concretely formulated, reason given in justification of the service charge, is that this method of charging is promotional; that it encourages greater use of the facilities. As more intensive use of a given system results in lower unit costs, it is in the interests of all concerned to have that type of rate schedule in force.

If these two reasons are real, they should conform to specific experience; the first should be reduced in any given case to dollars and cents; the second should emerge concretely in increased average consumption wherever such a charge has been introduced. The writer has had considerable experience in analyzing figures presented in support of the service charge on both of the above grounds, and has never found the claims justified by the facts.

Let us first consider the cost analysis that is usually presented to support the service charge. There are said to be certain customer costs, which are viewed as due to customers as such and not to electricity or gas furnished; that they are equal per customer, whether large or small, and that, therefore, in an equitable rate structure they should be included as a fixed monthly service charge, the same for all customers. If these costs are included in the rate per kilowatt hour or quantity of gas, the large users would be compelled to pay costs due to small users, and would thus be subjected to inequitable burdens. This unjust result is avoided through the device of the service

charge, through which each customer is compelled to pay the costs for which he is responsible.

This analysis is correct, if the facts as claimed are correct. If, actually, the costs as set out are due to customers as such, if they are equal per customer throughout the company's territory, and if there are no other counterbalancing factors, then, of course, the service charge is equitable, and the inclusion of the costs in the commodity rate would be unfair to large users.

We come, therefore, to the question of fact, whether these are the customer costs as claimed, whether they are equal (or practically so) per customer, and whether there are not counterbalancing factors to be considered in establishing a reasonable rate schedule for the different classes of consumers.

The answer depends upon conditions under which service is furnished. There are undoubtedly instances where the so-called customer costs are substantially the same per customer in the territory served and where the service charge would be a reasonable part of the rate schedule. But in most cities, there are wide differences in conditions under which service is supplied, so that the costs per customer differ greatly, and the service charge results in discrimination against the mass of small users.

The costs allocated to customers include return on property, taxes, and operating expenses. Usually the American Gas Association formula is used, or modification of that formula to meet special conditions. To bring out the erroneous assumption that there is even substantial equality of cost per customer, we shall consider, first, property costs allocated to customers, and then operating expenses.

We shall take the facts from a particular gas case in which extensive allocations were made. The largest amount and percentage of property costs attributed to customers were in the transmission and distribution system; 90 per cent was considered "customer cost." Suppose we examine the two items which made up the largest portion of the total in that group, and probably in most gas properties,—mains and services. Following the American Gas Association formula, the company apportioned 88 per cent of the mains and all of the services to customer costs.

First of all, we ask, does the length of the mains, or their size depend on the number of customers? Are they not determined primarily by the extent of territory served, and, secondarily, upon peak demands? They are not due at all to the number of customers as such, but they do differ greatly per customer according to conditions of residence.

Here are two streets supplied by

¶ "We *find in most urban communities variations galore between street and street, locality and locality, neighborhood and neighborhood, that defy the apportionment of any uniform figure as customer cost as regards mains and services.*"

the company. Street A consists mostly of one-family dwellings of 40 to 80-foot frontage; it has a total of 30 consumers. Street B consists of apartment houses, of about 120 feet frontage each, aggregating about 600 tenants, residing in 15 apartment houses. Each street is 1,000 feet long, with a gas main in the center, from which services extend to the houses on both sides.

The length of the main is the same in both cases. The size depends on the system, and is identical in the two streets. There are two services connected with each of the 15 apartment houses in B street, while only one service connects each of the 30 houses in A street.

Now consider the results:

For A street, the single-family houses, we have 33.33 feet of main and one service per customer, while for B street there are only 1.66 feet of main and 0.05 of a service per customer.

Where is, under these conditions, the assumed equality of customer costs? Inclusive of interest, maintenance, and depreciation, they form a large part of total distribution costs, and are twenty times greater per customer in street A than in street B. We find in most urban communities variations galore between street and street, locality and locality, neighborhood and neighborhood, that defy the apportionment of any uniform figure as customer cost as regards mains and services. And no other property costs, with the exception of meters, can be related to the number of customers, without ignoring great variety of conditions under which different customers are served. It is rank error to assume an equality of property costs per customer, and this applies not only to return on property, but also to depreciation, maintenance, and taxes.

Following the American Gas Association formula, the same company apportioned 64 per cent of its operating expenses (including uncollectible bills and taxes, but excluding production expenses) to customer costs. The maintenance expenses of the various properties were apportioned on the same ratio as the investment. Thus, maintenance of mains and of services (considered above with property) were allocated 88 per cent and 100 per cent, respectively, to customer cost; and the costs vary tremendously per customer under different conditions. The same is true of practically all distribution maintenance except meters.

There are, however, a number of expense accounts closely identified with the number of customers, such as meter reading, bookkeeping, billing, collecting, and similar items. But even these cannot be said to bear an absolutely direct relation to the number of customers.

Take, for example, meter reading under the illustrations given above. In A street with the private houses, the meter reader will have to visit each one of the houses, some of which may be locked on his first call. In B street he visits 15 houses, where all of the meters are, in the majority of cases, all together in the basement. It takes him much less time per customer, for the 600 customers in B street than in A street.

Take, also, collecting. In most in-

The Effect Upon the Small User of the Variations in "Customer Costs" of Gas

"THERE are undoubtedly instances where the so-called customer costs are substantially the same per customer in the territory served and where the service charge would be a reasonable part of the rate schedule. But in most cities . . . the costs per customer differ greatly, and the service charge results in discrimination against the mass of small users."

stances the company makes personal collections, through its meter readers, and obviously the time required per customer is less in the apartment houses than in the single-family house territory.

Bookkeeping and billing are very closely associated with the number of customers, but these two items by themselves constitute only a small percentage of the total expense. Practically all the expenses connected with the taking care of customer accounts and facilities are less per customer in apartment houses than in single-family house sections.

THE trouble with the American Gas Association formula, and similar formulas presented in justification of the service charge, is that the analysis of costs is incomplete. The investment and operating costs are conceived as falling within one or the other of two such subdivisions: (1) costs that vary with generation or use of gas or current; and (2) costs that vary with the number of attached consumers. But within the latter they include the largest items of investment and operating costs, which, it is quite true, do not fall in the first category, but neither do they fit into the second.

In fact, the most important costs form a third group. Their extent is determined by the scope of the distribution system, the size of territory, variety of demand, the physical layout. Once these are provided for, this group of costs becomes inevitable wholly or to a very large extent, regardless of either amount of use or number of attached consumers.

WHEN once an electric or gas utility is built to serve a given territory, most of the costs—investment and operating—cannot be avoided. They are in the character of overheads or general costs, which will not thereafter rise or fall with a rise or fall in the amount of gas or current used or with the number of customers to whom it is made available. But the character of residential consumption has a permanent influence on the costs with regard to spread of distribution

area. If a district of single-family houses is developed, the fixed costs per customer will remain inescapably high, but low in an apartment house section. They are not strictly customer costs, but vary per customer according to conditions under which service is rendered.

It seems that the mere statement of this third group of costs should be easily grasped as a matter of common sense, and in accord with everyday experience. But if this most important group of costs does not vary with either extent of use or number of attached customers, the question arises, which is the fairest and simplest basis to use in apportioning them to the various users?

If certain costs arise not because of the existence of consumers as such, it would seem that the fairest and simplest way to absorb them is in the charges for the commodity or service. Of course, the incidence of these costs may vary per unit of commodity or service, under a block system of rates. But whatever the share, it is fixed in the rates upon the units consumed. Within any given block, the consumers are treated simply and fairly; paying according to the benefit derived or amount consumed.

Aside from these considerations, there are, however, other positive reasons why these costs should be charged in the commodity rate, rather than levied as a service charge upon consumers as consumers. These reasons are found in the inherent character of the service charge, and in certain characteristics common to small consumers of gas or electricity.

The service charge, of course, has the effect of increasing the bills of the small consumer over the amounts he would pay on the basis of a commodity charge. But as consumption increases, the effect of the service charge in the total bill diminishes. To the extent that the introduction of the initial charge makes possible a lower follow-up block, it becomes of benefit to the larger consumer, and his bills are lower as a consequence.

While some costs may be considered as arising because of the consumer being there, be he large or small, the conditions under which large and small consumers are usually served vary in such a way as to render the small consumer more economical in the incurring of costs. While there are found all sorts of variations, as a rule the larger domestic consumers live in sparsely settled districts, in detached or semi-detached single family houses, while the small consumers are usually located in more densely populated districts, living in multiple family dwellings or large tenements and apartment houses.

The investment, maintenance, depreciation, and distribution costs per consumer, as was shown by our illustrations above, are lower for the latter group than for the former. Hence, if the total of such costs, or the major portion, is levied on a consumer basis, the effect is to saddle the small consumer with costs that are due largely to the large consumer or to conditions under which large consumers are served. On the other hand, if these costs are apportioned on a commodity basis, there is a counterbalancing effect to lighten the

burden of the small consumer, which compensates for the fact that they are less responsible for these costs, per consumer, than the larger consumers. At the same time the larger consumer usually derives benefit from the lower price follow-up blocks, thus putting him in a favorable position compared with the small consumer, even where no service charge is found in the rate schedules.

THE second reason and justification advanced in favor of the service charge is that it encourages greater use; that it is promotional, and, therefore, beneficial to all concerned, including the small consumers.

There is but the slightest ground in fact to support this claim. If the costs described by proponents of the service charge as due to customers, are apportioned on a commodity basis, and a favorable block system is introduced, so that in the higher blocks a smaller proportion of these costs is allocated per unit, then there is a real inducement to consumers to move from a lower block group to a higher.

But if a service charge keeps these costs from the commodity rates, there is to that extent less divergence between the lower and the higher blocks, and thus less inducement to increased consumption.

Whether any given schedule is promotional or not, depends on the points at which the commodity rates change, the extent of the change, the availability of moderate price facilities, and similar factors—all of which may or may not be present where a service charge is contemplated. Certainly, the latter by itself does not contribute to the making of the schedule promotional in character.

Besides, many of the small consumers, because of whom the service charge is introduced, are incapable of becoming larger consumers. Their very condition of life, living in small apartments, being supplied with heat, hot water, and other conveniences, renders the installation of additional facilities unnecessary or impossible. If such a charge can be justified only on the ground that it tends to promote greater use, then it is futile so far as a large class of the small consumers is concerned.

WE have had occasion to analyze a number of proposed service charge schedules, all of which, however, were applicable to large communities where extremely varied conditions prevail. On the basis of these analyses, it seems to us that the service charge would not be unfair only where there is substantial uniformity of conditions under which consumers are served. However, where such uniformity exists, its introduction from any viewpoint is really imma-

¶ "To *meet reasonably and most equitably all the circumstances to be taken into account in fixing a rate schedule, the best course is to fix a block rate, with such classification in blocks and successive unit rates as to promote effective utilization for various purposes.*"

terial. Very few consumers would be affected thereby one way or the other. A really promotional schedule may be introduced without a service charge.

Where, however, it is introduced in urban communities, consisting of varied conditions of housing and service, the service charge cannot be justified either upon cost analysis or upon the idea of encouraging larger use. It penalizes small consumers as a class without inherent reason or justification as to ultimate purpose.

There are, of course, small consumers served under unfavorable conditions of costs, and large consumers served under favorable conditions. No practical rate schedule can possibly meet all differences in cost throughout a given municipal territory. There are, moreover, reasons for a simple uniform rate schedule without regard to difference in costs in different sections of a city.

To meet reasonably and most equitably all the circumstances to be taken into acount in fixing a rate schedule, the best course is to fix a block rate, with such classification in blocks and successive unit rates as to promote effective utilization for various purposes.

What the News Items Report about the Utilities

MAIL boxes may be installed on street cars in California—if the proposals of the civic organizations are adopted.

* *

THE world's largest natural gas line, extending nearly 1,400 miles between Texas and Chicago, Illinois, has been completed.

* *

THE largest amount yet paid in England for a single telephone call was $1,440—representing 59 minutes of conversation with New York.

* *

DEATH sentences were imposed at Kabarook, in Soviet Russia, on four railroad employees who were held responsible for a recent wreck.

* *

DURING the past twenty years, while man-power in the United States has increased a third, and national wealth doubled, the costs of running the Federal government have soared over fourfold.

* *

THE largest family of stockholders ever assembled in any one American enterprise is that of a public utility—the American Telephone and Telegraph Company, which has 642,000 members.

* *

IN Germany successful experiments have been made in transporting pulverized coal through pipe lines, by means of compressed air—thus giving the railroads and motor utilities something new to worry about.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

BENJAMIN FRANKLIN
Statesman and journalist (written in 1774).

"Perhaps in general it would be better if government meddled no farther with trade than to protect it, and let it take its course."

CARLISLE BARGERON
Newspaper writer.

"As it works out in present-day practice, it seems that the only purpose it (the states' rights doctrine) would serve just now would be to protect the 'Power Trust' octopus."

T. K. QUINN
Vice president, General Electric Company.

"If in response to shallow clamor the utility companies should tire of explanations and leave the (merchandising) field, no one would suffer more now than the independent dealers."

EDWARD M. BARROWS
Magazine writer.

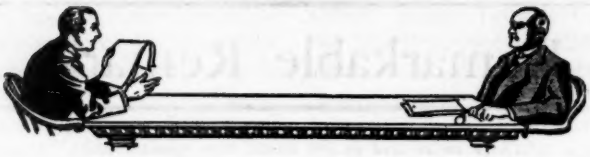
"The only example we have of Federal efficiency in power operation is that of Muscle Shoals, a plant which after twelve years of exertion—mostly in Congress, not in Alabama—the government cannot operate for sufficient returns to pay for the original site, and that site was given the government for one dollar."

OSWALD GARRISON VILLARD
Editor.

"The state should take over and operate, either directly or through some government corporation like the Mississippi Waterways Corporation, the railroads, the pipe lines, the telephone and telegraph, the radio, the mines, the oil wells, water power, and all other natural resources, thus making enormous savings, closing avenues to the making of excessive fortunes, and destroying the foothold of many masters of privilege."

JOHN E. ZIMMERMANN
President, The United Gas Improvement Company.

"The effective way to correct abuses in the utility industry which may exist is for the public to exercise a discriminating judgment between those companies and groups of companies whose properties are conservatively financed and managed in conformity with the best business standards of the day, and that relatively small number of companies or groups whose unsound financial or managerial policies and practices have brought discredit upon the industry as a whole."



Progressive Ventures in Commission Regulation

The Powers of the "Power District" Boards

PART III

In the first article of this series the author outlined the new and unusual measures recently promulgated in Wisconsin for the regulation of public utilities. In the second article was described the proposed "power districts," through which the municipalities may enter upon power projects of their own. In the following and concluding instalment the author tells in detail how the power districts will be organized, the authority they shall wield, how they will function, and what their relations with the reorganized Public Service Commission of Wisconsin will be.

By DR. MARTIN G. GLAESER
PROFESSOR OF ECONOMICS, UNIVERSITY OF WISCONSIN

THE general powers of the district are exercised by its board of directors acting through ordinance, vote, or resolution. The board will grant indeterminate permits; it will lease, purchase, sell, and mortgage the property of the district subject to certain restrictions; make short-term loans; exercise the power of eminent domain; appoint a general manager and such other officers as may be necessary and fix their duties; and it will authorize the appointment of other employees fixing their compensation.

Most important of all, the board will provide by ordinance for the issuance and sale of bonds of the district to finance the purchase or construction of any utility or parts thereof or additions, extensions, or betterments thereto. Such indebtedness of the district is limited to 5 per cent of the assessed value of its taxable property and must be approved by a majority vote of the electors of the district voting at a referendum election. It is contemplated, of course, that the district may apply the income from any source other than taxation to pay part or all of the annual instalments of interest on, and principal of, such bonds, reducing pro tanto the amount which must be raised by taxation.

To finance acquisitions or construction of fixed plants, several alternatives to the above procedure are provided.

The board is authorized to issue mortgage bonds or mortgage certificates secured by pledge of the acquired property and payable out of operating net income. It may acquire property subject to any out-

standing funded or mortgage indebtedness either with or without assuming any obligations with respect to such indebtedness. In the former event it may enter into a contract for the creation and substitution for such indebtedness of new obligations of the district subject, however, to the general debt limitation. Moreover, the district is authorized to enter into contracts, leases, and conveyances with the governing body of any municipality for the reciprocal delivery, production, lease, sale, or operation of any public utility property, facility, or service. Similar arrangements may likewise be made with any privately owned utility or with any public corporation.

Finally, the board is constituted the legislative body of the district and as such determines all questions of policy with respect to the objects for which the district was created.

It is contemplated that the general manager shall be the chief executive officer of the district. He need not be a resident of the state but he should be a person with experience in the construction, operation, or management of public utilities. He will have full charge of the construction, maintenance, and operation of the properties and will have full power of appointment and removal of all heads of departments, subordinate officials, and employees. He is required to make and publish a financial report showing the results of operation for the preceding fiscal year and setting forth the financial status of the district as of the end of the year.

In order to give such report greater probity the directors are required to employ annually the commission or some certified public accountant approved by the commission to examine the accounts, contracts, properties, and investments of the district. In his report the auditor shall make such recommendations and suggestions with respect to the accounting and record-keeping as may appear necessary for the efficient and economical management and operation of the public utility.

The determination of the district to acquire public utility property must be by a two-thirds vote of the directors-elect, who must notify both the owners and the commission. If the owner agrees to sell voluntarily, the terms and conditions must be approved by the commission. If the owner has consented to the purchase under the indeterminate permit law, the commission is required to fix the terms and conditions which will constitute just compensation. Additional flexibility is provided by empowering a single municipality within a district or two or more municipalities jointly to acquire any public utility operating under the terms of an indeterminate permit on behalf of, and for the benefit of, the district. The act authorizes contracts between such municipalities and the district for the immediate transfer and conveyance of the acquired utilities and the simultaneous payment of the purchase price. The purpose of this procedure is to forestall any legal objection, if there be any, to the supplanting of the municipality by the district in the exercise of its purchase option under the present indeterminate permit law.

IN the event that the owner of a public utility has not consented or has not become legally bound to consent to the purchase by the district of the utility, the district law outlines procedure whereby the necessity of the taking may be first determined and adjudicated by a circuit court, sitting with or without a jury as the parties may agree. If it is found that the necessity exists, the commission is notified and proceeds with the ascertainment of the just compensation to be paid by the district.

Public utilities owned by municipalities may only be acquired by mutual agreement or after hearing and determination by the public service commission that public convenience and necessity requires that the utility be owned and operated by the district. In the latter case the commission fixes just compensation as in purchase from private owners.

IF a district desires to acquire less than the whole of the physical property of any utility which is owned and operated as an entirety, the board of directors must obtain from the commission a certificate of authority.

Before granting the certificate, the commission must conduct a public hearing and investigation giving all interested parties an opportunity to be heard. Interested parties include municipalities, within or without the district, in which the utility operates or furnishes service.

In order to grant the certificate the commission must find:

(1) That the acquisition of a part of the utility will be of greater financial, economic, and industrial advantage to the district than the acquisition of the whole.

(2) That the acquisition of the part will not result in any substantial injury to public interests or impairment of public service than if the acquisition were of the utility as an entirety.

(3) That the acquisition of a part will not make the remainder of the property incapable of continuing to render adequate service at reasonable rates.

It should be noted that the emphasis is laid upon injury to public interests, leaving the question of injury to private interests, that is to say severance damages, for disposition in connection with the ascertainment of just compensation or by way of mutual agreement.

MUNICIPALITIES within the district may make a loan to the district to pay its preliminary organization and administrative expenses. All expenditures for the conduct of elections by political units as well as the expenditures of the commission in performing its duties under the law are charged to the district.

¶ "IT *is a distinguishing characteristic of this legislation looking toward public ownership and operation that it preserves the regulatory powers of the commission, and that it provides for varying degrees of interpenetration between public and private management.*"

As previously stated, the district may issue bonds subject to a limitation as to total indebtedness to raise funds for the purchase of permanent property, to refund outstanding bonds of the district, and to purchase and retire indebtedness secured by mortgage upon property acquired. All evidences of indebtedness of the district, whether general or special, and the income thereon is made subject to taxation upon the same basis as the obligations of private utilities. This leaves only the security afforded by the taxing power as the distinguishing differential between the marketability of public and private security issues.

OTHER provisions of the law lay down the procedure by means of which municipalities contiguous to a district may be annexed and two power districts may be consolidated. A district is dissolved if, within two years of its creation, it does not become the owner and operator of a public utility or begin the construction of its plant. Disposal of its utility property likewise terminates its legal existence. All assets and proceeds remaining after dissolution are distributed to municipalities within the district in proportion to the taxes collected during its existence and in an amount sufficient to repay such taxes. The remaining proceeds are distributed in proportion to the gross operating revenues for the last full five years of operation.

THE last important measure in this program of public utility legislation was an act providing for the creation of the state utility corporation of Wisconsin.

As already stated, it is one of the purposes of this act to effect a return to the methods of regulation based upon cost accounting which had been undermined by court decisions. A corollary is the desire to reinvigorate the public ownership option by making possible state ownership and operation or at least state participation in ownership known in Europe as the mixed system.

Five persons, appointed by the governor, serve as directors of the corporation for staggered terms of ten years. The qualifications and compensation of the members of the board are the same as for the directors of electric power districts.

Until the Constitution is amended to permit the state to bond itself the functions of the corporation will be largely investigatory in character. To this end the corporation is authorized to call upon the public service commission to gather such information as it may require and upon any department of the state government for advice and assistance.

THE duties of the corporation, in addition to assisting municipalities in the creation of a power district, are to furnish advice, service, and information concerning the purchase, ownership, construction, extension, improvement, management, and operation of any facilities for the production and sale of light, heat, water, or power, the transmission of telephone messages, and the rendering of street and interurban railway services. It may also, upon request of the governor or the public service commission, represent the state in proceedings before the Interstate Com-

How the Proposed Power District Boards May Obtain Plants that Are Privately Owned

"PUBLIC utilities owned by municipalities may only be acquired by mutual agreement or after hearing and determination by the public service commission that public convenience and necessity requires that the utility be owned and operated by the district. In the latter case the commission fixes just compensation as in purchase from private owners."

merce Commission and the Federal Power Commission.

IT is made the special duty of the corporation to conduct a survey of the resources and facilities for the production, transmission, and distribution of light, heat, water, and power in the state. The survey is for the purpose of establishing a statewide plan for the most practicable means of securing their economical development for agricultural, industrial, transportation, and domestic uses. In working out schemes for future development the directors are to take into account the coördination of water power and fuel power developments with the regulation of rivers, the utilization of by-products, the potential field for electrification of farms, homes, industrial establishments and of railroads, the interchange of electrical and other energy between Wisconsin and other states, and finally the economy inherent in existing consolidations and interconnections of public utilities. In devising the statewide plan account should also be taken of the most feasible way of integrating the small municipal and private plants with the larger units.

The tentative statewide plan is to be submitted to the public service commission which, after public hearing, is to adopt it with such modifications as it finds will serve the public interest. Thereafter the plan is to be followed in passing upon applications for certificates of convenience and necessity, in approving the construction, extension, and improvement of the public utility plant and in approving future consolidations. The commission may depart from the plan only upon a specific finding that public interest would be better served by a deviation.

THE corporation is likewise authorized to enter into contracts with public utilities and street and interurban railways for periods not exceeding ten years whereby the value of the property is fixed for purposes of computing the reasonable earning capacity of such properties, and for stabilizing the rate of return to the owners thereof. Such contracts may

also provide for the purchase of the properties, in whole or in part, fixing the purchase price and a method of payment out of surplus earnings or from other sources. In addition the contract may provide for a lease or joint operation of properties, for the purchase by the state of mortgage bonds issued by the public utility and for any device which will bring about reasonable equality of opportunity for all classes of consumers, actual and potential, within the state as to rates, service, and access to facilities.

After the contract has been accepted by the parties it must be submitted to the public service commission which will hold public hearings. The commission is then required to submit a report to the legislature setting forth its opinion as to whether the contract is in the public interest. The contract does not become binding until approved by statute. It is made the duty of the commission to advise and coöperate with the parties in making audits, estimates, and other determinations of fact which will aid in reaching an agreement. The commission will be bound by the terms of such contract and will exercise all powers of regulation and administration required thereunder.

It is a distinguishing characteristic of this legislation looking toward public ownership and operation that it preserves the regulatory powers of the commission, and that it provides for varying degrees of interpenetration between public and private management.

It is believed that the public ownership options thus provided for will meet the varying situations in which the policy may commend itself.

The Problems of Regulation Must Be Solved by Facts Instead of Slogans

Too often as I have listened to the speeches made on the subject of power I have been reminded of the persuasive but meaningless rhythm of tom-tom dances. Again and again the speakers reiterate the awful words "governmental interference" on one platform, or "power trust" on the other, thereby working themselves and their audience up to the desired pitch of enthusiasm or terror. Engineers, however, need not run for cover when the business advocate cries "government" or the political orator shouts "trust." We may be influenced by silent facts but not by loud words.

What is needed, then, in the public discussion of the power issue is more facts, and facts more clearly presented. Back of the public discussion, of course, must be the quiet study of this issue, which presents both an economic and an engineering problem. There are serious deficiencies in the information available for use, and it is these blank spaces in the picture of economic conditions that should worry.

—Dr. George Otis Smith,
CHAIRMAN, FEDERAL POWER COMMISSION

A NEW AND SIGNIFICANT TEST OF

The Right to Be Regulated

PART II

The state of Texas has recently raised a question that involves a regulatory principle of vital importance to privately owned and governmental public utility enterprises alike: Can a private business be converted into a "public utility"—and regulated accordingly—by a mere legislative *fiat*? In the preceding instalment the author told of the development of the motor truck as a common carrier, the steps that have been taken to regulate it, and concluded with the query: "Could the state, through its commission, revoke the certificate of public convenience on the theory that it was a privilege which the state had a right to withhold?" The following instalment proceeds from that point.

By HENRY C. SPURR

THE question as to the enforceability of unconstitutional conditions by direct action or indirectly by threat of revocation of a permit is not without difficulty. The Supreme Court's record of decisions on the subject has not been consistent. As the law now stands, however, the view of the court would appear to be that governments cannot circumvent the Federal Constitution in any way by the "condition-to-privilege" device. Let us examine some of these court opinions.

There are a few cases [3] in which the court has made a broad generalization to the effect that a state, in granting a privilege which is within its power to grant or withhold, may impose such condition as it pleases. Sometimes to these general statements are added the qualification "provided these conditions are not repugnant to the Constitution or laws of the United States." [4]

A case involving the validity of the grant of the privilege of doing an insurance business provided that the corporation would not remove cases to the Federal courts, came up to the Supreme Court from Wisconsin as far back as 1874. The corporation accepted the condition but afterwards had a change of heart. It was sued on a policy in a state court. It tried to remove the case to a Federal court

[3] New Orleans Water Works Co. *v.* Rivers (1885) 115 U. S. 674, 29 L. ed. 525; Pembina Consol. Silver Min. & Mill. Co. *v.* Pennsylvania (1888) 125 U. S. 181, 31 L. ed. 650; Davis *v.* Massachusetts (1897) 167 U. S. 43, 42 L. ed. 71; Waters-Pierce Oil Co. *v.* Texas (1900) 177 U. S. 28, 44 L. ed. 657; Packard *v.* Banton (1924) 264 U. S. 140, 68 L. ed. 596; New Orleans Gaslight Co. *v.* Louisiana Light & Heat Producing & Mfg. Co. (1885) 115 U. S. 650, 29 L. ed. 516.

[4] LaFayette Ins. Co. *v.* French (1856) 18 How. 404, 15 L. ed. 451.

but the state court refused to let it do so, holding, in substance, that the purposed removal was a violation of the condition in its permit. But the Supreme Court held that the condition was void as it was repugnant to the Constitution of the United States which grants to citizens the absolute right to remove certain controversies to the Federal courts.[5]

A MODIFICATION or refinement of this rule was made as the result of another case which reached the court a year or two later from the same state. The majority of the court held that, notwithstanding a condition that cases should not be removed to the Federal courts was invalid, the state might nevertheless revoke the certificate for failure of a company to comply with that invalid requirement. The court said that as the state, had given the company the right to do business on condition that it would not resort to the Federal courts, the state had a right to revoke the permit or license for a breach of that condition. The reason given for that decision was that a license is revocable. There was a dissenting opinion by Mr. Justice Bradley who said, among other things:

> "Though a state may have the power (if it sees fit to subject its citizens to the inconvenience) of prohibiting all foreign corporations from transacting business within its jurisdiction, it has no power to impose unconstitutional conditions upon their doing so. Total prohibition may produce suffering and may manifest a spirit of unfriendliness toward sister states; but prohibition except upon conditions derogatory to the jurisdiction and sovereignty of the United States is mischievous, and productive of hostility and disloyalty to the general government. . . . The whole thing, however free from intentional disloyalty, is derogatory to that mutual comity and respect which ought to prevail between the state and general governments and ought to meet the condemnation of the courts whenever brought within their proper cognizance."[6]

If the rule announced in the latter case were still the law, it would have an important bearing on modern public utility regulatory problems. Take the Texas case:

THE state of Texas, under the guise of attaching conditions to its permit to use the highways, is attempting to regulate the rates of a private business. It is trying to force the surrender of constitutional rights. Assuming that the Supreme Court applied to this statute the rule laid down in the two Wisconsin cases mentioned the effect would be this:

If the commission granted a permit to a private truckman to use the highways, and, afterwards, the commission attempted to fix his rates, it could be enjoined from doing so. But that would be an empty victory for the truckman as the commission could immediately turn around and revoke the certificate, because of his failure to consent to rate regulation.

Take the proposal which has been made in Massachusetts to compel utility companies to surrender their right to a reasonable return upon the fair value of their property, as a condition of doing business in the state. The rule that such an effort to evade the Constitution is invalid would be of little use to a utility if the state could, nevertheless, revoke the charter of a company for failure to comply with a condition of that kind.

The same would be true if the Federal government should try to force

[5] Home Ins. Co. *v.* Morse (1874) 87 U. S. 445, 22 L. ed. 365.

[6] Doyle *v.* Continental Ins. Co. (1877) 94 U. S. 535, 24 L. ed. 148.

the surrender of constitutional rights as a condition to the granting of licenses to develop hydroelectric power. Assuming such conditions to be unconstitutional, the Constitution would nevertheless not protect the companies if the government could revoke the licenses on the ground that the assertion of the constitutional right was a violation of the provisions of the grant. The constant threat of the withdrawal of the permit would be sufficient to enforce the purpose of the government however unconstitutional that purpose might be.

As late as 1906 the court still upheld the right of a state to revoke a permit for a violation of an unconstitutional condition. The court declared that a state may provide that if a foreign corporation remove a case to a Federal court, its license shall be revoked.[7]

In 1922, however, the Supreme Court receded from the position taken in these earlier cases. In Terral *v.* Burke Construction Co.[8] it was held that a state may not revoke a license granted to a foreign corporation on condition that it would not remove causes to the Federal court, merely because the company violated that condition of its permit or franchise. Mr. Chief Justice Taft, writing the opinion of the court, which was unanimous, said that the cases in the court in which the conflict between the power of a state to exclude a foreign corporation from doing business within its borders, and the Federal constitutional right of such foreign corporation to resort to the Federal courts, has been considered, could not be reconciled. The court specifically overruled the earlier cases to the contrary.[9]

It is true that the court in the cases discussed was considering merely the attempt of states to force the surrender of a single constitutional right, that is to say, the right of access to the Federal courts. But as one constitutional right is as sacred as anoth-

[7] Security Mut. Life Ins. Co. *v.* Prewitt (1906) 202 U. S. 246, 50 L. ed. 1013.

[8] (1922) 257 U. S. 529, 66 L. ed. 352.

[9] For other cases in which the illegality of unconstitutional conditions to the grant of privileges is discussed see Western U. Teleg. Co. *v.* Texas (1882) 105 U. S. 460, 26 L. ed. 1067; Gloucester Ferry Co. *v.* Pennsylvania (1885) 114 U. S. 196, 29 L. ed. 158; Barron *v.* Burnside (1887) 121 U. S. 186, 30 L. ed. 915; Norfolk & W. R. Co. *v.* Pennsylvania (1890) 136 U. S. 114, 34 L. ed. 394; Crutcher *v.* Kentucky (1891) 141 U. S. 47, 35 L. ed. 649; Southern P. Co. *v.* Denton (1892) 146 U. S. 202, 36 L. ed. 942; Hooper *v.* California (1895) 155 U. S. 648, 39 L. ed. 297; Ludwig *v.* Western U. Teleg. Co. (1910) 216 U. S. 146, 54 L. ed. 423; Western U. Teleg. Co. *v.* Kansas ex rel. Coleman (1910) 216 U. S. 1, 54 L. ed. 355; Pullman Co. *v.* Kansas ex rel. Coleman (1910) 216 U. S. 56, 54 L. ed. 378; Southern R. Co. *v.* Greene (1910) 216 U. S. 400, 54 L. ed. 536; Herndon *v.* Chicago, R. I. & P. R. Co. (1910) 218 U. S. 135, 54 L. ed. 970; Harrison *v.* St. Louis & S. F. R. Co. (1914) 232 U. S. 318, 58 L. ed. 621; Tennessee Eastern Electric Co. *v.* Hannah (Tenn. Ch. Ct.) P.U.R. 1928D, 50.

¶ "The *right of a utility company to earn a return on the reasonable present value of its property, for example, is not a right which flows from the state or even from Congress but from the Constitution of the United States. The subject matter is, therefore, beyond the frontier of governmental powers.*"

er, in the eyes of the law, it is reasonable to conclude that the rule now established by the Supreme Court is:

1. That a condition in the grant of a privilege by the Federal or state governments that citizens surrender constitutional rights is void.

2. That unconstitutional conditions in grants of privileges will not be specifically enforced by the courts.

3. That unconstitutional conditions in grants of privileges cannot be indirectly enforced by the revocation of the privilege.

THE confusion of ideas as to what ought to be done about unconstitutional conditions in grants of privileges has been due partially to the notion, that since governments have the right to grant or deny the privilege, they can name their own conditions. While it is easy to understand that there must be some limitation to the powers of the government in this respect, it is much more difficult to perceive what that limitation is. A very clear statement in regard to this, however, was made by Mr. Justice McKenna in a case involving the right of a state to prevent the sale of gas in interstate commerce. He said:

> "At this late day it is not necessary to cite cases to show that the right to engage in interstate commerce is not the gift of a state, and that it cannot be regulated or restrained by a state, or that a state cannot exclude from its limits a corporation engaged in such commerce."[10]

Is this not the true landmark by which the limitation of power to impose conditions may be perceived?

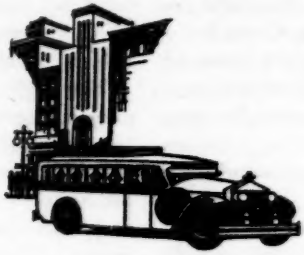
In other words, is not the limitation of governmental power over conditions to the grant of privileges marked by the power of the government, not merely over the subject matter of the privilege, but also *over the subject matter of the condition?*

The right of a utility company to earn a return on the reasonable present value of its property, for example, is not a right which flows from the state or even from Congress but from the Constitution of the United States. That subject matter is, therefore, beyond the frontier of governmental powers. Would not any attempt to enforce a different rule as a condition to granting a privilege, therefore, be void as an attempt to assert jurisdiction over subject matter beyond the scope of governmental power? It would seem that the rule ought to be that the frontiers of governmental power cannot be crossed by governments either openly or covertly under any sort of disguise or pretense.

WHAT the effect of a different rule on constitutional rights would be is indicated in a leading truck case in which it was held that a private carrier is unconstitutionally deprived of his property without due process of law by a statute requiring him to become a public carrier in order to secure a permit to use the public highways. Mr. Justice Sutherland, in delivering the opinion of the court, said among other things:

> "There is involved in the inquiry not a single power, but two distinct powers. One of these—the power to prohibit the use of the public highways in proper cases—the state possesses; and the other—the power to compel a private carrier to assume against his will the duties and burdens of a common carrier—the state does not possess. It is clear that any attempt to exert the latter, separately and substantively, must fall before the paramount authority of the Constitution. May it stand in the

[10] West *v.* Kansas Nat. Gas Co. (1911) 221 U. S. 229, 55 L. ed. 716.



The State Cannot Impose Burdens of Utility Regulation Upon Private Citizens

"If the state cannot, as a condition of permitting a citizen to use the highways, require him to become a common carrier, it is difficult to see how it can compel him to submit to burdens which apply only to common carriers or public utilities, such as the regulation of rates and the right to do business."

conditional form in which it is here made? If so, constitutional guaranties, so carefully safeguarded against direct assault, are open to destruction by the indirect but no less effective process of requiring a surrender, which, though, in form voluntary, in fact lacks none of the elements of compulsion. Having regard to form alone, the act here is an offer to the private carrier of a privilege, which the state may grant or deny, upon a condition, which the carrier is free to accept or reject. In reality, the carrier is given no choice, except a choice between the rock and the whirlpool,—an option to forego a privilege which may be vital to his livelihood, or submit to a requirement which may constitute an intolerable burden. It would be a palpable incongruity to strike down an act of state legislation which, by words of express divestment, seeks to strip the citizen of rights guaranteed by the Federal Constitution, but to uphold an act by which the same result is accomplished under the guise of a surrender of a right in exchange for a valuable privilege which the state threatens otherwise to withhold. It is not necessary to challenge the proposition that, as a general rule, the state, having power to deny a privilege altogether, may grant it upon such conditions as it sees fit to impose. But the power of the state in that respect is not unlimited; and one of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights. If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence." [11]

THE application of the reasoning in these decisions to the ruling of the court in the Texas case is this:

First: The right to engage in private business and in so doing to compete with others is a constitutional right.

Second: The right of private business to freedom from rate regulation is a constitutional right.

Third: These rights are as sacred as the right of a citizen to determine whether he will engage in private business or common carrier or public utility business.

[11] Frost *v.* California R. Commission, 271 U. S. 583, 70 L. ed. 1101, P.U.R.1926D, 483.

If the state cannot, as a condition of permitting a citizen to use the highways, require him to become a common carrier, it is difficult to see how it can compel him to submit to burdens which apply only to common carriers or public utilities, such as the regulation of rates and the right to do business. That this cannot be done by a legislative declaration that the business of private truckmen is affected with a public interest or that a certificate of public convenience and necessity is only a "permit" is reasonably certain. That regulatory burdens which may be imposed on common carriers alone or on public utilities alone cannot be indirectly imposed on private business under the guise of conditions in permits to use the highways would also seem to be reasonably certain.

THE principles involved in the Texas case have a very wide application. They bear not only on the constitutional rights of the owners of private business, but also on the constitutional rights of the owners of public utility business. Can a state, as a condition to allowing a corporation to do business, require it to enter into a contract either to (a) demand no more than a specified return on the cost of its property, or (b) resort only to state courts for the settlement of disputes arising under that condition? Should the constitutional rule that a utility company is entitled to a fair return on the present value of its property, rather than on the prudent investment in it, be permitted to be evaded by the incorporation of a condition in a permit to develop hydroelectric energy, that the licensee's compensation shall be limited to a reasonable return on actual cost or prudent investment?

These are interesting questions, involving fundamental rights of liberties. Eternal vigilance against the extension of governmental powers is essential to the preservation of the liberty of the governed. Since it is the tendency of the governing group to encroach upon the liberties of the group governed, the latter must be constantly on the watch to prevent any breakdown of constitutional safeguards.

"WHEN government embarks upon business ventures ordinarily undertaken by private enterprises, it is making a departure which may lead most anywhere. If it goes into the utility business there are plain indications that it will be urged to extend this competition with its own citizens to other classes of business. Those who are actively behind the movement to put government into business will not stop with the public utilities."

—CHARLES T. CATES, JR.

OUT OF THE MAIL BAG

The Case of the Municipal Power Plants on the Pacific Coast

I HAVE read with interest Mr. Paul Y. Anderson's article "Why I Believe in Government Ownership—Unless" in the December 10th issue of PUBLIC UTILITIES FORTNIGHTLY. I have been more or less interested in this subject myself, having taken quite an active part in several of the campaigns that have taken place in Oregon in the last five or six years. It seems to me that his article is made up of the usual generalization from cursory knowledge. He comes to the conclusion that in all instances where municipal ownership has been adopted, that it has been demonstrated that the service is furnished for less to the consumer. How does he account for the fact that in Seattle the private concern is in competition with the municipal plant, is selling electricity at the same or lower rates, and is paying taxes and dividends? The same situation exists in Los Angeles. I do not know of a single instance where a private plant has been put out of business by the municipal plant through competition. They have been taken over by condemnation or by mutual agreement in many instances, but the private concern has never been driven out of business.

This seems to me remarkable when the tremendous advantage of the municipal plant is taken into consideration. In both Seattle and Los Angeles, every department of the city uses its influence to bring the light and power business to the city. Issuance of building permits and inspection of buildings, in many instances, are predicated entirely upon the proposition that the permittee will use municipal light. I do not say this in particular condemnation of the city, but simply pointing out these matters as illustrating that with all of this pressure which the city is able to use, still the private company is able to successfully compete. Not only that, but there is constant agitation on the part of the municipal plant, urging the citizens to use it because it is their property. In spite of all this, the private concern is still successful.

Undoubtedly there have been abuses in the past. Undoubtedly there will be many matters to criticize in the future. If municipal operation eliminated these matters entirely, there might be some justification to adopt that scheme. Government ownership will not provide perfect operation of the utility business any more than it has provided perfect operation of the government itself. The matters to be criticized may take an almost different form, but they will not be the less serious and it is so much easier to remedy bad conditions in private industry than it is in governmental affairs. It is comparatively easy for the government to reform a bad condition in business. It is almost impossible for the government to reform a bad condition in itself. This condition alone ought to be sufficient to convince all sound-thinking men that the government has no business in the power business, even though there might be some temporary rate advantages.

—ALLAN A. SMITH,
Baker, Oregon

The Right of Utility Employees to Strike

YOU are to be congratulated for publishing, in your issues of January 7th and 21st, Dr. Lyle W. Cooper's articles discussing the right of the utility employee to strike. This is a theme that will become a vital issue in the future, and we need to develop a law-minded public opinion on it. Some of these days we will develop intelligence enough to paraphrase the United States Supreme Court decision in the Munn Case, which is probably our most-quoted public utility regulation doctrine, as follows:

"Property or labor does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property or labor to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created.

"There is no attempt to compel these owners to grant the public an interest in

their property or labor but to declare their obligations to the public if they voluntarily choose to use their property or labor in this particular manner. (94 U. S. p. 126.)"

We have regulated capital, and because of the public interest we must likewise regulate labor.

—SAMUEL S. WYER,
Columbus, Ohio

The Effect of the Current Depression Upon Utility Valuation Theories

THE article by Dr. Henry E. Riggs, "Prudent Investment *versus* Reproduction Cost," in the December 24th number of PUBLIC UTILITIES FORTNIGHTLY raises the pertinent question as to whether or not the two opposing schools of valuation will again change sides—a point that is assuming a more than academic interest in these days of economic adjustments.

The advocates of the prudent investment theory of rate making state that it is impossible to ascertain the value of utility property.

The argument is that the value of property employed in any business really depends upon the earning capacity of that business.

Let us cite a hypothetical case:

Suppose each of two business concerns had an investment of one million dollars in the property employed in their respective undertaking. One of these concerns, let us say, is just able to make operating expenses; the other makes a net profit of five hundred thousand dollars a year. Obviously, the value of the concern making a large profit would be much more than the value of the concern making no profit at all, irrespective of the question of the amount of money expended for the property. The value of the business of the concern making the profit would be estimated by capitalizing that profit at a certain percentage.

Those who say that it is impossible to ascertain the value of utility property mean that it is impossible to capitalize the earning capacity of a utility company because of the fact that the reasonableness of the rates charged to produce the earnings or profit is in question. If the earnings could be capitalized to ascertain value, it would be impossible to decrease rates, because the earnings capitalized would produce a certain value which in turn would allow the company to earn the amount at present charged in its rate schedules. This would in effect be reasoning in a circle.

However, there is one instance in which the earning capacity of a utility company could be capitalized for the purpose of ascertaining value. If economic conditions would not permit the company to earn a percentage of return on the actual investment in the property, then the capitalization of the earnings would produce a value less than the actual cost of the property.

The advocates of the value theory, however, assert that there are other means of ascertaining value for rate making besides capitalization of earnings. Values for rate-making purposes are not fixed by capitalizing earnings. Therefore, the advocates of the prudent investment theory say that the value so ascertained is not the true value of public utility property.

We are likely to hear more about this question during the ensuing months.

—D. B. SANDERS
New York City

Facts Worth Noting

THE first successful test of television reception on a moving train was recently made in England.

* *

A NEW use for electricity is being advocated by the Societies for the Prevention of Cruelty to Animals—for the killing of our dumb brutes.

* *

THOMAS A. EDISON posed, as the artist's model, at the age of thirty, for the gunner in the Monmouth battle monument in Freehold, N. J.

* *

RAILROAD locomotives in Brazil have been run experimentally with coffee as a fuel—in an effort to make use of the huge surplus of that commodity.

* *

THE world's fastest railroad train, the "Cheltenham Flyer" of England, has recently beaten its own record by running up a score of 6,000 miles in 5,233½ minutes.

What Others Think

The Possibility of Capitalistic Abuses Under Government Ownership

IT is difficult to understand how any important angle of the controversy over government *versus* private ownership of public utilities could have been overlooked, in view of the vast volumes of printed matter that have been published upon the subject. Yet a line of argument that seems almost new did recently appear under the editorial masthead of the New York *Sun*. The editorial advances the proposition that it is possible for all the abuses of capitalism to thrive just as strongly under governmental operation as it does under our individual economy, plus the annoyance of being more repugnant to the average citizen.

FOR years one of the favorite slogans of those who oppose governmental operation of utilities has been "Less government in business and more business in government." The inference is, of course, that our governments would function more efficiently if they applied private business methods to the transaction of purely governmental affairs, and that they should do so before attempting to apply political methods to the transaction of affairs heretofore conducted by private business. The *Sun* editorial, however, indicates that business in the government would not be an unmixed blessing; it takes the position that no method has yet been devised for turning the business over to the government that did not end in turning government over to business. It stated in part as follows:

> "Professor James Mavor's book, 'Niagara in Politics,' and the Smithsonian Institution's report of the Gregory investigation should be read for light on this demonstration. From these accounts it is clear that the bill creating the Hydroelectric Commission originally gave it permissive powers only; nothing was to be done by it without the approval of the Provincial Government. It was not long before the commission controlled that government in respect of all matters of concern to the hydroelectric business.
>
> "With the assistance of its overstaffed working force, the Hydro built up a political machine that made its influence felt in every town and hamlet. It controlled municipal assemblies and the provincial legislature. It obtained legislative immunity from prosecution or civil action arising out of interference with property rights in its negotiation of contracts; it could not even be sued for damages rising from breach of contract. Whenever it desired to exceed the powers conferred by its charter it promptly obtained legislation authorizing the desired act or validating it if it already had been done. When auditing methods favored by the government became objectionable to the commission, the commission had influence enough to cause those methods to be changed.
>
> "The Gregory report affirms that the commission frequently exceeded the wide powers given it; that it committed illegal acts that were afterward ratified and confirmed by legislation; that it exceeded legislative appropriations by millions of dollars; that it made agreements 'clearly beyond the powers of the commission, while auditors protest and governments look on'; that the government is sometimes called upon 'to deal with a project which the commission has already launched,' and finds itself powerless in the face of commission propaganda. Professor Mavor asserts that the Hydro altered the political character of the province, inflicted serious harm upon spontaneous industrial action, and 'contributed toward driving industry and intelligent organization either into the province of Quebec or across the line into the United States.'
>
> "Government can conduct business only by means of bureaus and commissions; those bureaus and commissions inevitably tend to become autonomous. That they may become in some respects more powerful than government itself is obvious.

Dangerous as private plutocracy may prove to be, regnant public plutocracy is a thousand times more to be dreaded."

THIS argument, of course, is not new, but it does not receive nearly as much attention as other arguments. The report of the Gregory Commission, (an investigating body appointed by the Canadian Parliament), was never made public. Mr. Samuel S. Wyer, nationally known power engineer, had access to the report, however, and from his *verbatim* summaries it would appear that the Ontario Hydro Commission was just as ruthless in brushing aside the law of the land as the various American trusts have been painted as doing during their heyday in the nineties.

True, there is no evidence that individuals connected with the Ontario Hydro Commission ever amassed huge personal fortunes out of its operation or ever could do so, but aside from the money problem, there is presented the possibility that the people can be made to suffer from the lust for power and the greed for complete political domination, just as much under the shadow of governmental bureaucracy as under the shadow of a privately operated industrial "octopus."

—M. M.

EDITORIAL. *New York Sun.* December 18, 1931.

SALIENT FINDINGS OF ROYAL COMMISSION. Published by Samuel S. Wyer, Beggs Building. Columbus, Ohio.

The Swope Plan as a Broader Concept of a Business "Affected with a Public Interest"

A GOOD-SIZED depression costs money; how much no one knows. But the loss in capital wealth and particularly in income must be enormous, affecting every economic and social class.

J. George Frederick undertakes to estimate for the United States the economic losses occasioned during and by the depression between October, 1929, and October, 1931. He arrives at staggering totals: $185,000,000,000 loss in national wealth, and $43,600,000,000 in national income, or a total of $228,600,000,000 in exactly two years.

Relatively this means that we have lost about one half of our national wealth and between one fifth and one fourth of our national income. Of course, these figures are at best rough guesses, but if they are no more than half true, they must challenge the interest of every person out of rompers.

Granting, however, that the estimates are substantially accurate, they picture the situation in colors somewhat too drab, particularly as to the loss in value of our national wealth. After all, in spite of the depression, the land and capital goods still exist; roads, public buildings, factory buildings, residential buildings, public utility plants, machines, all kinds of natural resources, furniture, and the like. We have simply changed our notions of the value of these goods in terms of dollars, but our capital equipment can be used as productively as ever in the creation of goods and services. The value of capital, in the final analysis, results from the creation of economic goods and services, and it makes little difference, from a national standpoint, whether we reckon our wealth at $360,000,000,000 (October, 1929) or $185,000,000,000 (October, 1931). The nation is not enriched by inflation or impoverished by deflation.

Of course, many individuals have been adversely affected by the slump in the dollar value of wealth and income. Ruin is the lot of those debtors who acquired obligations at high values and have to meet interest and principal on that basis at a time when the worth of their assets is much less. The

plight is serious for creditors of all kinds who failed to realize that the value of land and capital would shrink sufficiently to wipe out proprietary equities and thus precipitate wholesale bankruptcies and forced sales. And it goes without saying that unemployment and limited employment have blighted the lives of countless persons dependent upon wages, salaries, and professional income.

The fact that the depression has laid a heavy hand on laborers, business men, professional workers, landlords, and, in truth, upon a considerable portion of our population, has resulted in a veritable torrent of books and articles on economic planning. Quite naturally people, in seeking a solution to the depression, looked to Russia which apparently has avoided unemployment and depression by means of a planned economy.

POSSIBLY the best-known scheme yet made public for the salvation of the United States is the Swope Plan. On September 16th last, Mr. Gerard Swope, president of the General Electric Company, proposed that all industrial and commercial companies with fifty or more employees and doing an interstate business may join a trade association whose rulings shall be mandatory. After three years, membership shall be compulsory to all such companies. The trade associations and their members must submit to the supervision of the Federal Trade Commission, or a bureau of the Department of Commerce, or some Federal body specially constituted. It is further suggested that the anti-trust laws be amended to permit a more friendly treatment of the proposed combinations.

Protection of employees, according to the Swope Plan, is to be secured by elaborate provision for life and disability insurance, a workmen's compensation act, old age pensions, and unemployment insurance.

Concerning the general features of the plan outlined by Mr. Swope, he has this to say:

> "There is nothing new or original in what I am proposing. I am merely bringing together well-considered propositions that have found support, including some that have been put into actual practice."

THOSE who have studied utility history and regulation will readily observe the truth of Mr. Swope's remarks. The plan in most essentials is moderate in tone. For a considerable period of time utility rates, service, financing, accounting, combinations, extensions, and abandonments have been subject to state or Federal control and, in some instances, to joint control. In 1920 the steam railways were no longer required to observe the provisions of the Federal anti-trust laws providing the consolidations and acquisitions were approved by the Interstate Commerce Commission.

What renders the Swope Plan of interest is that for the first time "big business" is ready to admit publicly that our older ideas of a *laissez-faire*, competitive economic system must be modified not only for public utilities but also for many so-called private enterprises. It may be that the public utility concept "affected with a public interest" will be applied to such industries as coal, steel, oil, banks, and building construction.

At any rate, the Swope Plan has aroused discussion of the merits of a planned economy as against a *laissez-faire* society.

—RALPH L. DEWEY
Ohio State University

THE SWOPE PLAN. Edited by J. George Frederick. New York: The Business Bourse. 1931. 221 pages. $3.50.

"IT is rightly contended that certain forms of property must be reserved to the state since they carry with them an opportunity for domination too great to be left to private individuals without injury to the community at large."
—POPE PIUS XI
ENCYCLICAL ON "RECONSTRUCTION OF THE SOCIAL ORDER."

Public Utility Service Becomes a Factor in the President's Home Ownership Conference

ONE of the noteworthy efforts of the Hoover Administration has been the establishment of the President's Conference on Home Building and Home Ownership. The purpose of this conference is to determine the ways and means of starting an effective home ownership movement that will stay the trend toward apartment houses and other forms of tenancy which has become so marked of late years in our larger cities.

Some critics of the Administration have interpreted this move as a policy prompted by the real estate dealers and the construction industry for their own gain. Be that as it may (and it may even be justified on that ground during this era of slim business), there is an unquestionable social advantage that can be realized by our city dwelling citizens if this movement can be made to bear practical fruit.

The immediate task confronting the President's conference is to find out how homes can be built or purchased by our citizens with the least strain upon their pocketbooks, and the least danger of forfeiture. It must also determine how it can be made possible, through governmental aid or otherwise, for financing agencies to extend the most attractive terms to prospective home buyers.

THE conference appointed a "Committee on Utilities for Houses" to investigate the cost and relative effectiveness of utility installation in the average private home. This was not remarkable in view of the fact that the cost of such installation, including the major items of water and sewerage, constitutes as much as 11.3 per cent of the entire cost of an average home. This committee submitted to the conference, last December, a tentative report which discussed, among other matters, the relative advantages of gas and electricity. It spoke well of the recent advances in the technique of these two services and pointed out how they might be installed to the greatest advantage of the individual home owner. Here is a typical passage from the report:

> "Recent developments in gas have increased the facility with which a supply may be obtained by extension even in smaller communities. It must not be expected that such service can be obtained at urban rates. A fair rate, based on cost of service plus reasonable profit on investment, can be worked out with the utility company. Such a rate might properly embody a graduated scale principle, so devised that in the earlier years when houses are widely spaced the unit price will be fairly high, but will later be reduced gradually as the houses fill in and consumption increases. Usually this is effected by guarantee or refunding contracts."

A second committee appointed by the conference was the Committee on Technological Development. This committee also made a tentative report devoted partly to a statement of guiding principles that should govern the specifications for installing utility service in private homes.

OBVIOUSLY, this movement should benefit the utilities. The trend towards an apartment house population should not be pleasing to the power and gas industries. It should not be particularly pleasing even to the telephone industry, if the increase of extension set service is to be considered. Yet, the *Gas Age-Record* has a few unkind words in its January 23rd (1932) issue for these tentative reports. It finds that the committee has compared the relative efficiency of gas and electric appliances with an undue partiality towards the latter. Under the title "U. S. Propaganda from U. S. Source," the editorial concludes with the following paragraph.

> "We are glad that these reports are tentative, because they contain several glaring examples of ignorance of actual conditions. We trust they are examples of

ignorance, because otherwise they must be condemned more sternly as unfair propaganda."

—W. R. N.

TENTATIVE REPORT OF COMMITTEE ON UTILITIES FOR HOUSES. December 4, 1931.

EDITORIAL. *Gas Age-Record.* January 23, 1932.

The Invasion of Federal Regulation Into the Domain of the States

MARYLAND, the cradle of religious liberty in America, appears to be about to become a much more modern cradle of political freedom, if the recent utterances of two of her most distinguished sons can be taken as an expression of the sentiment of her people.

It was at the Jackson Day dinner at the Concord Club in Baltimore that Governor Ritchie, a self-avowed candidate for the Democratic presidential nomination, restated his oft-repeated credo of states' rights. One remarkable aspect of Governor Ritchie's beliefs consists in the very fact that he does repeat them so often in the face of such formidable forensic opposition. Governor Ritchie's record of efficiency as the four-times elected executive of his own state is indubitable evidence that he suffers neither from lack of common sense nor does he suffer from sheer perversity.

If he had stated once that we ought to reverse the modern trend of political thought and aim towards a more simplified Federal government, it might be excused as a slip of the tongue. A second offense might be explained as a desire to save his face. But when he tenaciously clings, in speech after speech, to his belief that our centralizing tendency of Federal government is all wrong, it has a cumulative force, like certain drugs which, administered in repeated small doses finally have surprisingly effective climaxes.

It gives us pause and makes us wonder whether, in the swelling tide of fashionable economic thought in the form of a more and more complicated and centralized government at Washington, we have not really overlooked one or two important fundamentals. It takes real courage for a figure in public life to suggest in the face of the deluge of proposals for increased governmental regulation of industry that we are heading the wrong way; that we must retrace our steps and harken back to the principles of Jefferson if we are ever to regain politico-economic stability. It is a suggestion that a man of Governor Ritchie's qualifications would not suggest lightly, nor without much serious deliberation. Here is the gauntlet which he flung down to the regulationists at the Jackson Day dinner:

> "Democracy is facing an historic test, comparable only to the tests which marked the eras of Jefferson and Jackson. New forces and strange tendencies have steered us far from safe moorings. The time has come in the nation's life for a return to fundamentals and first principles. In no other way can you find a starting point again for sound thinking and constructive planning."

THE governor made specific application of his doctrine to some of our more pressing national problems. He found, for instance, that proposed relief for the unemployed through compulsory unemployment insurance is exactly the wrong way to solve the problem. He repeated his abhorrence of governmental entrance into any line of private business and his denunciation of national prohibition. He bases his views, not only upon economic reasoning, but upon more broad philosophic reasoning (that is too frequently ignored by our economists)—reasoning which has to do with a man's right to pursue his own course to mortal happiness. He stated:

"Individualism does not stop with man's business and material activities. It gives him the right to live his life in freedom and in liberty so long as he does no hurt to the like rights of others or to the recognized sanctions of society. Properly applied, it would shield him from a hundred different ways in which Federal officers scattered through the various branches of government can annoy him and hector him to no good purpose. Just now there is hardly a phase of your life from the cradle to the grave, from the cellar of your home to the contents of your pocket, into which Federal officers cannot pry."

ANOTHER distinguished Marylander, as well as a frequent and honored contributor to PUBLIC UTILITIES FORTNIGHTLY, writes somewhat along the same lines in the February issue of *The American Mercury*. He is the Hon. Harold E. West, chairman of the Maryland Public Service Commission. Writing under the title "The Power Trust Bugaboo," Chairman West confines his attention more closely to the problem of utility regulation, but there is the same common principle of states' rights running like a red thread through all of his reasoning, just as it does in the arguments of Governor Ritchie.

The West article sets out to show that the "power issue," which is so highly tooted by certain newspapers as likely to play a vital part in the 1932 campaign, is in fact a fake issue which will not and could not play a vital part in the 1932 campaign, or any other national campaign. Of course, this has been said often before by many sensible political spokesmen, including Al Smith, but Chairman West gives reasons why his contention must be so. Summed up, these reasons are as follows:

"The people as a mass are not interested. The whole subject of utility rates and utility regulation is a complicated one. They do not understand it and will not bother to study it. They do not believe they are being robbed. They know that electric rates have been going down, and, that alone among charges of utility service, they are now lower than they were before the World War."

The bulk of Chairman West's article is devoted to an explanation of the historical background of major regulatory controversies, such as the reproduction *versus* original cost theory of valuation, all of which is too familiar to the readers of these pages to warrant any repetition here, although proper and interesting material for the subscribers of *The American Mercury*. The article is not, however, without some comparatively new and well-reasoned thoughts on the general subject of regulation.

The most striking of these is Chairman West's suggested substitution for the proposed Couzens bill for the Federal regulation of interstate power which, incidentally, the author condemns as an unwarranted invasion of states' rights. Here is the West plan:

"All that is necessary is to have Congress pass an act specifically divesting current transmitted across a state line of its interstate character prior to its sale, and giving to the state in which the sale is made jurisdiction to regulate the rate. There is distinguished legal authority to the effect that such legislation would be valid."

THERE may be distinguished legal authority to support Chairman West's position, but there would be, nevertheless, serious doubt about the constitutionality of the proposal. It is all very well for Congress, in the exercise of its exclusive constitutional power over certain phases of interstate commerce, to delegate authority to fix railroad rates to a Federal board such as the Interstate Commerce Commission; but to delegate similar authority over interstate power to the respective states is quite a different matter. The Interstate Commerce Commission is a servant or agent of Congress itself, while the states are sovereigns in their own right.

The West article intimates that the state commissions at present have sufficient power to prevent any abuses that might rise from the absence of Federal regulation over interstate power, if they really care to exercise it. And if they do not care to exercise such powers, he argues, that is their own business and none of Uncle Sam's. He states:

"In any given state, the regulation of the utilities is at least as efficiently done

as the work of any other administrative agency of that state. If the states' agencies generally are inefficient it is likely that the regulatory commission also will be inefficient. It is just as efficient as the people of the states desire it to be, and how efficient they desire it to be is their own affair, with which the people of sister states have no concern."

In other words, Chairman West maintains that the individual states ought to have a right to decide for themselves to have good regulation or bad regulation, and even, if it suits their fancy, to have no form of regulation at all.

—F. X. W.

ADDRESS. By Governor Albert C. Ritchie, at annual Jackson Day dinner. Baltimore, Md., January 8, 1932.

THE POWER TRUST BUGABOO. By Harold E. West. *The American Mercury*. February, 1932.

Commission Regulation as a Step toward State Socialism

THERE is increasing evidence that some of our foremost political and industrial leaders are beginning to think seriously about states' rights. But notwithstanding all of the scornful remarks about "dead issues" which are heaped upon the modern states' rights advocate by those progressives who see no end or let-up in the present unquestionable trend of government power towards Washington, the stand taken by Governor Ritchie of Maryland seems to be gathering strength.

One of the most interesting aspects of this new political mobilization towards states' rights is the fact that it seems to cut, like so many of our modern political issues, squarely across party lines. The Democrats no longer have a monopoly upon states' rights sentiment. The latest recruit of note in this cause is Major General James G. Harbord, former Chief of Staff of the A. E. F. and present chairman of the board of directors of the Radio Corporation of America. General Harbord is of the Republican political faith and an active member of the Union League. Nevertheless, in the February issue of *The Review of Reviews* he flays the present tendency towards centralization of power in the Federal government with a zeal that rivals Ritchie's.

GENERAL Harbord's pet aversion seems to be the commission form of government. He has always despised the commission,—all kinds of commissions. He has frequently referred to them as bastardly offsprings of ill-conceived unions between the major branches of our constitutional government. Now General Harbord finds that the commission is the most efficient device for bringing the entire country under the domination of Washington.

General Harbord harkens back to the fundamental spirit of our Constitution, which contemplated the division of all governmental powers and activities into three major and responsible branches, the executive, the legislative, and the judicial. The commission, however, is neither fish nor fowl. It exercises the powers of two branches of the government, sometimes of all three, but is directly responsible to none of them. As a result, he believes that many of our commissions have grown to be laws unto themselves and pocketbook cancers for the government treasuries.

General Harbord apparently has much faith in the fundamental sufficiency of our Constitution. He points out that there was no such thing as a commission in our government until after the Civil War. It entered in a mild and innocent form. Its first purpose was to codify the laws. When its task was finished, this original commission was dissolved. Next followed the Hayes-Tilden Electoral Commission. This also was dissolved after the com-

pletion of its duties. But since that time General Harbord recalls no example of a commission winding up its affairs. Modern commissions seem to be immortal. General Harbord believes that if the work to be accomplished cannot be placed directly under the responsible control of any of the three branches of our government, as contemplated by the original spirit of our Constitution, then that is of itself evidence that it would be wise for the government not to attempt such work.

GENERAL Harbord specifically condemned the growth of the Interstate Commerce Commission, Federal Radio Commission, and the Federal Trade Commission. He even thinks the states are on the wrong track when they follow the example of the Federal government in establishing state public service commissions. He finds that the Federal government has used a number of Federal commissions as a means to lure the states, particularly the poor and needy states, into debasing contracts under the guise of Federal aid projects that have the effect of surrendering state powers to the increasingly powerful plutocracy of Washington commissions.

He says that the encroachment on the state powers is not only hateful as subversive to our liberties, but means the eventual failure of our government. He looks upon government paternalism as the straight path to state socialism. Along these lines he states:

"This path, once entered, leads only to state standardization of men and morals. It is the end of that individualism which has made us what we are and which has been our proudest boast. It opens upon a vista wherein there will be Federal control of our daily lives and conduct from the cradle to the grave, with restrictions of every sort administered by Washington bureaus and enforced by Federal officials, affecting everything that we enjoy and all that we do. It reveals a Federal government duplicating the action of the several state governments with double overhead, double enforcement machinery with double personnel, and more than double expense, and two sets of statutes on the same subjects.

"The debauchery of the states by the 50-50 Federal-aided activities has raised Federal, state, county, and municipal taxation to where farms and homes must be sold to pay taxes; some of our great cities are on the verge of bankruptcy; business cannot be conducted at a profit in many lines; the value of farm lands and city real estate is reduced; factories are closed and thousands of workers are thrown out of employment. Mounting taxes and government expenditures drive capital into tax-free bonds and all taxable property will eventually pass to government ownership. There is no doubt that there is a formidable group in this country who look to taxation to bring about a redistribution of wealth."

PROBABLY the majority of us will not agree with all of General Harbord's arguments. He is obviously prejudiced against commissions, but there is much common sense in his fundamental position that governmental activity at Washington in the end costs the taxpayer at the crossroads just as much as governmental activity at his state capital. Generally speaking, a concrete road, a school house, or a public library, cost pretty much the same to build and maintain whether they are constructed on a 50-50 plan by the Federal government or by the state alone.

Unfortunately, Washington politicians have been able to convince many of us by some sort of economic hokuspokus that Washington can do everything cheaper and better. Local taxpayers who look on the 50-50 contribution from the Federal government as in the nature of charity are obviously deluding themselves. The Federal government has no more mysterious source of revenue than have the states. In the end it must all come out of the taxpayers' pockets. The difference, and there is a difference, consists chiefly in the location of the administration.

—M. M.

GOVERNMENT BY COMMISSION. By James G. Harbord. *The Review of Reviews.* February, 1932.

Is State Regulation of Air Carriers a Waste of Effort?

In view of the much-heralded supervision of the United States Department of Commerce over commercial aeronautics, many wonder just why it is necessary for the individual states to bother with the regulation of aviation. Admittedly the Federal regulation of pilots and inspection of equipment are strict and efficient enough. Additional state supervision of such matters, therefore, would seem, offhand at least, to be a needless and expensive duplication of governmental activity.

Mr. Gill Robb Wilson, director of aviation for New Jersey state, tells us why state regulation is both useful and necessary. In the first place Federal regulation is restricted to interstate air lines. Unless the state police the local intrastate air carriers, all sorts of abuses are possible.

Mr. Wilson presents reasons for thus believing as follows:

> "The public does not realize how many planes were used for local use and how many private airports in New Jersey and elsewhere were under no sort of restrictions before our state department was established. Unregulated flying resulted in uninspected planes, unqualified pilots and mechanics, heavy financial losses to the industry, and constant menace to the public.
>
> "Our state control has changed all this. Beginning this month, every plane flown in New Jersey must be one licensed and registered by the United States Department of Commerce (the only exception being machines owned by some branch of the Federal government itself), and every man or woman operating a plane in New Jersey must hold a current, effective pilot's license issued by the Federal Department of Commerce.
>
> "In that way New Jersey is safeguarding its citizens. By making our aviators conform to the Federal rules we prevent conflicts in regulations, and by accepting the Federal licenses for pilots and planes, instead of requiring state licenses, too, we are effecting an economy for the state, for routine work of our department is thus cut to a minimum."

Another beneficial result of state regulation is evidenced by the reduction in formerly high insurance rates imposed on air carriers. Insurance companies are beginning to take cognizance of the safeguards which the states are throwing around intrastate aviation.

Perhaps the greatest benefit of state regulation has been the prohibition of foolhardy stunt-flying and the elimination of fly-by-night reckless "sightseeing" flyers. Mr. Wilson describes these as follows:

> "In times past much of the harm done to aviation has been caused by irresponsible and unregulated barnstorming. Flying was long considered something of a circus sideshow. Incompetent pilots would take passengers aloft in rickety planes that had been bought "for a song" and patched together.
>
> "Other fliers, unfit by temperament or experience, would try the most difficult feats, often with fatal results. Yet the Federal government could not stop this, and neither could the state. But now things are different.
>
> "Effective last August, no air race, air meet, aerial exhibition, or acrobatic demonstration can be conducted in New Jersey unless under letter of authority from the state department of aviation."

—W. R. N.

STATE REGULATION OF AVIATION. By Gill Robb Wilson. *United States Daily.* November 2, 1931.

Other Articles Worth Reading

ADVERTISING VS. PUBLICITY. By Dempster MacMurphy, vice president, Middle West Utilities Company, Chicago, Illinois. *Electrical World.* January 30, 1932.

THE POWER TRUST BUGABOO. By Harold E. West, Chairman, Public Service Commission of Maryland. *The American Mercury.* February, 1932.

The March of Events

Inequalities of Power Tax Are Criticized

A steady stream of protests has been flowing in to the House Ways and Means committee, which is considering the suggestion that electricity is a fertile field for taxation, says the Brooklyn *Eagle*.

"Originally the idea was to impose a half cent a kilowatt hour tax on the current, leaving the question whether it could be made to lie squarely on the shoulders of the big utility companies or passed on to the ultimate consumer hanging in mid-air," we read.

"Very little calculating was needed to show the manifest unfairness of such a tax. For the Southern cotton mill and the Northern factory the half-cent charge would mean a 100 per cent in power costs.

"Now the confusion in the committee is caused by the suggestion advanced by Charles R. Crisp, Democrat, Georgia, that the tax amount to 5 per cent of consumer bills.

"The difficulty which such a program, letters to members of the committee suggest, is the wide disparity in rates to small consumers in various sections of the country.

"In Washington, D. C., for instance, the rate is only 3.9 cents a kilowatt hour for domestic consumers. In Brooklyn the rate is much higher.

"This would mean that a Brooklyn householder's tax would be considerably higher than that of a resident of Washington, even though both used the same amount of current.

"Another difficulty is the fact that in many cities consumers must pay a minimum charge, regardless of the amount of power used. In other cities no such charge is made.

"Still another question which has arisen to perplex those trying to raise about $1,000,000,000 through new taxation in the next fiscal year is the charge to be made for current generated by the consumer.

"Protests indicate that many large users of electrical energy make their own current. Are they to escape taxation while competitors who from utility companies bear the brunt of the new tax? Such is the question asked by the competitors.

"If these producer-consumers of current are to get off scot free how will the tax be levied and how will it be calculated? This is another question puzzling the committee.

"The advantages seen for the flat tax are the same which were urged for many of the taxes imposed during the war. It would be easy to calculate the return and the money could be collected easily. The tax would be added to the consumer's bills and collected by the utility company which would turn it over to the Federal government.

"Advocates of the tax argue that the wide disparity in rates would actually not result in any burdensome levies. The differences in charges, under a 5 per cent levy, would amount to only 10 or 15 cents a month for the average householder and such a tax, they hold, would not arouse any great storm of protest."

Alabama

Residential and Commercial Rates Will Be Investigated

The Alabama Public Service Commission, although it has dismissed a complaint against all the rates of the Birmingham Electric Company based largely upon the assertion that all costs are lower, has ordered an investigation by its engineering department to determine whether commercial and residential rates for light, heat, and power service are in excess of the reasonable value of the service to the customer or whether they are unduly discriminatory or prejudicial.

A special committee of the Alabama Rate Association reported that it has received 150 complaints of excessive water bills rendered for the last quarter of 1931, and that figures furnished by the Birmingham Water Works Company showed that for the last quarter of 1930, when no complaints had been made, excess charges amounted to $75,940 and in the last quarter of 1931, when complaints were made, the excess charges amounted to only $34,000. Alleged excess charges in the third quarter of 1931, the committee report stated, totaled $61,813.

California

Lower Power Rate Is Wanted to Relieve Agriculture

At hearings before the commission concerning the rates of the San Joaquin Light & Power Corporation representatives of the California Farm Bureau Federation strenuously sought lower electric rates to conform with the lower values of agricultural products. It was testified that costs to the farmers were down except charges for power.

The cotton industry in California was declared to be seriously menaced unless production costs including power are vitally cut, since southern competition has no power bills to pay while power in California costs 1.6 cents a pound out of a total out-of-pocket cost of 7 cents. Planting and seed cost were said to have been reduced 60 per cent; harvesting expense, 70 per cent; and ginning, 50 per cent, while the power cost was said to have increased 15 per cent.

The agricultural interests and representatives of the city of Fresno came into conflict over the apportionment of possible rate reductions. A witness for the city placed a value of $2,007,191 on the company's electric properties within the city and estimated that the power company was receiving a return of at least 20 per cent on that investment as compared with a return of 7½ per cent on the investment of $70,000,000 in the system. Representatives of agricultural interests criticized the apportionment and contended that the rate on the investment in the city has been closer to 10 per cent than 20 per cent. The question was raised whether consumers' advances were not made mostly by farmers, but the witness contended that a large part of consumers' advances for construction came from subdivisions.

Walter W. Cooper, commission engineer, criticized the working capital computation made by W. E. Durfey, assistant secretary of the utility company, who held that the utility is entitled to include in the rate base capital assets in the form of service rendered to consumers from the day the service is performed, whether or not the consumer has been billed for that service. This was declared by the commission engineer to be in effect charging consumers interest on their bills before the bills were presented.

The cost of money was discussed by Dr. Paul Cadman, executive secretary of the San Francisco Stock Exchange. He testified that the cost of money will increase within the next five years because the country is about to come out of its economic depression and there will be a growing demand for credit and capital and, therefore, the cost of money will go up. Quoting from the Fresno *Bee:*

"He said that interest rates are practically the same as bond yield and that last year bond yields began increasing.

"Cadman predicted that banks in the future will severely cut their purchases in the bond market, 'as they have had a bitter lesson in security dealing within the past few years.'

"He said that life insurance companies are heavy investors in securities and that these investments will have to be cut down because of the heavy call upon these companies for policy loans."

Idaho

Power Tax Bars Lower Rate

Under the heading "Joker Lurks in Power Tax," the Boise *Statesman* informs us that the specter of the kilowatt tax has stalked into power rate conferences and blocked any hope of rate reductions for the near future in territory served by the Utah Power & Light Company. This paper says:

"The commission embarked early in the year on a campaign of bringing down power rates. Tentative dates for valuation hearings on the various power companies of the state were set, and then the commission commenced informal hearings, designed to determine whether there would be any basis for proceeding further.

"The kilowatt tax, however, is only one factor in the distress of the Utah concern, which has suffered a heavy curtailment of revenue because of the shutting down of mines and smelters in the Salt Lake area, where its major commercial load is sold."

It is reported that negotiations between the commission and the Idaho Power Company for a general rate reduction in the company's territory were halted when the kilowatt tax was upheld by a Federal court. Representatives of the power company declare that the tax reduces net revenue by a half million dollars or so annually, and that a cut in rates consequently would seriously threaten them with a deficit, since the industrial use of power is also sharply curtailed.

Indiana

General Rate Probe Follows Restraining Order

AN investigation of rates charged by the Indiana General Service Company in nineteen cities has been launched by the public service commission. This, according to the Indianapolis *Star*, is in reply to the utility's attempt to block a rate reduction at Marion by securing from a Federal court a temporary restraining order against a commission rate order.

Complaint was made in court that the rate order was unconstitutional because the reduction would amount to confiscation of property. The rates affected by the order applied only to users of electricity in the corporate limits of the city.

City Attacks Utility Rates after Its Own Rates Slashed

THE Richmond city council has ordered its utilities committee to investigate rates of the Indiana Gas Utilities Company, the Richmond Water Works Corporation, and the Richmond Home Telephone Company to determine whether they are fair and equitable. The public service commission recently ruled that the prevailing rates of the Richmond municipal electric plant yielded an excessive revenue and directed that plant earnings be reduced to yield a return of 7 per cent.

Mayors Organize against Public Utilities

CONCERTED opposition to public utilities in Indiana, says the Peru *Tribune*, was pledged by twenty-four mayors who attended a meeting called at Martinsville to advance municipal interests. The officials decided to form a permanent organization later. The *Tribune* outlines the purposes of the organization as follows:

"Placing of all holding companies under the public service commission; support of all legislative candidates in the organization's objectives; revision of law to permit cities and towns to establish their own utilities or purchase private properties; placing of rate schedules on a 'money invested' basis; revision of the law so members of the public service commission will be elected, not appointed by the governor, and removal of restrictions on operations of municipally owned utilities."

Kansas

Cities Service Investigation Reaches Record Length

THE investigation by the public service commission into the reasonableness of the 40-cent city gate rate and other intercompany charges in the Cities Service gas organization has reached a record for length in commission investigations of public utilities in Kansas, it is stated in the Topeka *Capital*, which adds:

"Since the hearing opened last October 16th, Walter Grice, commission reporter, has transcribed 1,750 pages of testimony. He estimates that when he completes the transcription of his shorthand notes the typewritten record will cover 3,000 pages. In addition, 72 exhibits running into thousands of pages have been introduced.

"The 2,000-page record made in the 'long train' case, heard by the commission in 1926, was said to have been the most voluminous record previously made."

The investigation was launched after Cities Service representatives had refused to accede to the demand by Governor Harry H. Woodring that a reduction of 10 cents be made in the gate rate. The governor recently criticized the refusal of the utilities to make voluntary cuts, and Robert D. Garver, attorney for the Gas Service Company, a Cities Service subsidiary, issued the following statement, quoted in the *Capital:*

"The governor in this instance, as in others, has heralded to the world as a benefactor of the state, a company which he says has saved its consumers in the state $100,000 a year. In our case we are denounced for refusing to make a reduction of $2,400,000 a year, by which sum our earnings would be reduced if the city gas rate should be reduced 10 cents a thousand as demanded.

"Had we been able to purchase peace for $100,000, it would seem that good business judgment would prompt that payment rather than the quarter million dollars the pending proceeding has already cost us.

"Our associated companies are spending in Kansas $1,000,000 a month, $12,000,000 a year. If the welfare of Kansas is really the matter in the governor's heart, it would seem to

us that he would be solicitous in safeguarding our ability to continue that contribution to Kansas prosperity, rather than increase the difficulties we have encountered by reason of the depression and decreased earnings, conditions which have compelled others to cut wages and forego dividends.

"Since October 16, 1931, the reasonableness of our city gate rate has been under investigation by the Kansas commission. Any fair-minded observer of that proceeding will say that the rate is entirely reasonable and a higher rate could be justified.

"We believe we are serving Kansas better by running our business in such manner as to preserve our ability to serve in the future as in the past, rather than attempt uneconomic things for political acclaim."

Kentucky

Utility Taxes and City Ownership before Legislature

THE House Research Committee, according to a report in the *United States Daily*, has recommended taxes on electricity and a consolidation of the motor transportation department and the railroad commission for economy. The proposed tax would be one fourth of one per cent per kilowatt hour on electricity, estimated to produce $1,200,000, and 2 cents on each 1,000 cubic feet of gas, which is expected to produce a revenue of $500,000 annually.

A bill has been passed by the house to authorize second, third, and fourth-class cities to own and operate electric plants permitting them to issue bonds to pay for the plants and pledge plant revenues for retirement of the bonds. Third-class cities are similarly covered in another bill.

Gas Franchise Prepared for Sale

AN ordinance has been prepared for the sale of a gas franchise in the city of Owensboro. The ordinance fixes the maximum rate to be charged for natural gas. The franchise of the Owensboro Gas Company expired in October of last year and city officials and gas company representatives failed to agree on rates to be charged. In the Louisville *Courier-Journal* it is stated:

"The proposed franchise is for a period of twenty years. The ordinance provides that no bid under $200 will be considered. The successful bidder will be required to pay to the city treasury the sum of $100 per year for a period of twenty years.

"The rates proposed in the ordinance are, for the first 1,000 cubic feet or less at the rate of 10 cents a hundred cubic feet with a minimum charge of 75 cents a month; next 2,000 cubic feet or less at the rate of 7½ cents a hundred cubic feet, and all in excess of 3,000 cubic feet a month at the rate of 5 cents a hundred cubic feet.

"In the event it becomes necessary because of the cost of obtaining and gathering natural gas or by reason of diminished supply, to use artificial gas or a mixture of gases, then the price to be charged shall be regulated accordingly.

"Under the present rates 1,000 cubic feet of gas costs $1.80; 2,000 feet, $2.30; 3,000 feet, $3.30; 4,000 feet, $3.50, and 5,000 feet, $4.30.

"At the election in November of last year, bonds to the extent of $200,000 were voted by the citizens of Owensboro for the purpose of establishing a municipal natural gas distribution system in the city of Owensboro. Since that time no steps have been taken by the commissioners to issue the bonds and no indications have been given that the bonds will be issued in the near future. Sale of a franchise does not prevent the city from building its own gas plant at any time."

Maryland

Park Tax Cut Proposal Provokes Hearing

REPRESENTATIVES of the United Railways, the municipal government, and the general public, according to the Baltimore *Sun*, are to be called upon at public hearings to make preliminary outlines of their views on the park tax which for several years has been assessed against the street railway company. The city has been considering the question of eliminating or reducing the tax.

The Allied Civic Improvement and Protective Associations have been actively opposing the reduction of the park tax and they are expected to be represented at the hearings, which are to be held before a committee appointed by the city council to study the question. Dr. Jacob H. Hollander, professor

of political economy at Johns Hopkins University, pointed out that there are three parties interested. The railway company's stand is clearly marked as well as the city's but, he said, there is another side to the question and one for which it is very difficult to obtain a spokesman, but a very real side notwithstanding, and that is the interest of plain Mr. Citizen.

A pending ordinance would reduce the 9 per cent tax on revenues at the rate of one per cent each year until 1940, when it would reach 2 per cent. The street railway company has steadily maintained that car riders should not bear the burden of supporting a park system used by all the people. Representatives of taxpayers, on the other hand, contend that the railway should continue to pay the tax instead of its expense being met by taxpayers.

Regulation of Gas Lines Argued

THE court of appeals on February 5th heard arguments on the jurisdiction of the public service commission over pipe lines carrying high pressure natural gas across the state. The circuit court of Baltimore had decided in favor of the Maryland Gas Transmission Corporation, which had questioned the power of the commission to demand a franchise for continued use of the interstate pipe line.

The gas corporation has 79 miles of pipes laid in the state running from the Pennsylvania line across several counties in Virginia.

Commission Installs New Testing Apparatus

GAS and electric testing apparatus recently purchased by the public service commission to modernize the testing laboratories is being installed, says the Baltimore *Evening Sun*, which adds:

"The principal article of the new fittings is an automatic gas test recorder which makes a complete test in the form of a permanent record. With the old tester one man was required to make four tests daily, taking more than an hour at each test, and then at the end of the month compile these readings into a single report. . . ."

"The gas testers show the content of the gas served in Baltimore for every hour in a 30-day period as compared with the four checks in twenty-four hours as made by the old equipment. The electric testers will be used for checking meters on complaints of users of this service. The gas meter testers have been improved to the extent of permitting the testing of the heating units in the natural gas to be distributed in the state along the pipe lines of the Maryland Gas Transmission Company."

Massachusetts

Legislative Investigation of Rates Is Asked

AN investigation of public utility rates was asked of the legislature on February 3rd, through the joint rules committee, by Senator James C. Scanlan of Somerville, Mayor John J. Murphy of that city, and others, says the Worcester *Post*. The investigation would be made by a commission appointed by the legislature rather than by the department of public utilities.

Proponents of the measure stressed the point that there had been a reduction in the costs of doing business, and it was declared that this reduction should be passed along to consumers.

Sheldon E. Wardwell, counsel for the Massachusetts Gas and Electric Association, opposed the investigation, stating that there is plenty of legislation on the books at present to bring about the inquiry sought. He saw no need for any further lawmaking on the subject. Charles S. Pierce, vice president of the New England Telephone & Telegraph Company, also opposed the measure. He said that there could be no reduction in telephone rates without a reduction in wages of employees.

Try for Rate Agreement to Avoid Litigation

CHAIRMAN Henry A. Attwill, of the commission, after a hearing on February 4th had been started on a complaint against rates of the Lawrence Gas and Electric Company, suggested the possibility of an agreement on a rate revision in order to avoid the necessity of extended hearings. This suggestion was accepted by city and labor officials and officials of the company, and the hearing was adjourned until February 16th, at which time the company was to submit figures showing operations for the year 1931.

The Lawrence Central Labor Union asserts that gas and electric rates have not been reduced since 1921, although workers of the city are receiving less pay and thousands of others are walking the streets.

Michigan

Gas Service Charge Does Not Suit City Officers

THE Benton Harbor city commission, according to the Benton Harbor *News*, has approved "drastic action to compel a revision of the local gas rates." This move came after the company had notified the city manager that it did not contemplate any change from the service charge type of rate at the present time. The dollar service charge, it is said, has been a thorn in the public's side ever since the rates were revised some five years ago, and negotiations in some form or other have been going on ever since for its removal.

City officials were considering strongly taking the matter before the public utilities commission. The city manager was instructed to ascertain the approximate cost of having an appraisal made of the gas company property.

Pressure to compel the gas company to accede to the city's rate demands two years ago was brought in the form of a suit attacking the company's claim of a perpetual franchise to operate. The court, however, held that the company did have a perpetual franchise in the city.

Decreased Consumption Prevents Rate Reduction

GAS rates cannot come down at this time because the decreased consumption in homes and factories has reduced gas company earnings considerably below the 7 to 8 per cent that the courts have held public utilities are entitled to earn, according to Charles W. Bennett, vice president and general manager of the Detroit City Gas Company, who with other utility officials is opposing a reduction in utility rates for Detroit consumers.

Alex Dow, president of the Detroit Edison Company, and Burch Foraker, president of the Michigan Bell Telephone Company, in recent interviews have asserted that conditions make it impossible for them to reduce rates at this time. Mr. Dow said that light rates are not too high but on the contrary residential rates are lower than the company could claim under the law, and that if anybody wants to make a complaint against residential rates before the public utilities commission, the company will petition and fight for higher rates.

The Detroit Edison Company, it was said, had not cut salaries and had not reduced personnel, except it had not filled vacancies that had occurred on the staff, and it had let some of its construction force go because there was no new construction to do.

Gross earnings of the electric company, it was said, had been 8½ per cent less in 1931 than in 1930, and operating expenses could not be pulled down into tune with lessened earnings. This, it was declared, would be impossible, even if there were not once more an increase in taxes. The company's taxes were said to run 11½ per cent compared with 5½ per cent before the war.

The Detroit common council has been studying the public utility rates, Mayor Frank Murphy stating that all utility rates should come down "in keeping with all other living costs."

Minnesota

City Plant Operation, New Utility Threat, and Nonpaying Users Beset Utility

AS a climax to hostilities with the Minneapolis Gas Light Company, the city of Minneapolis, according to the Minneapolis *Evening Tribune*, has taken the first step towards a proposal to take over the company's property and operate it as a municipal gas plant. The council voted for a ruling from the city attorney on the right of the city to acquire the property, and in what position the city would be, under existing law, to acquire the property under a purchase clause in the franchise of the gas company.

The city charter, it is said, does not permit the board of estimate and taxation to issue bonds for acquisition of public utilities. Therefore, it has been suggested that the matter may have to be submitted to Minneapolis voters by referendum.

The company has been reluctant to shoulder the taxpayers' poor relief burdens, with the result that Mayor Anderson, as head of the board of public welfare, has issued an ultimatum to the company for turning off gas in homes of poor relief residents unable to pay their bills, says the *Evening Tribune*. The mayor threatened to order the company to take out as many as 8,000 gas meters, and to have the welfare board install oil stoves as an economical substitute, as this would be a direct saving to the department of public relief.

A new gas service has been offered to the city by the Great Northern Gas and Utilities Company of Delaware, according to the Minneapolis *Tribune*. John Wight, local representative of the company, has made a proposal to supply Minneapolis with natural gas at rates substantially lower than those now paid for manufactured gas. The company asks a 20-year franchise. A pipe line would be built from the Eastern Montana gas field, where the firm is reported to have more than 1,000,000,000,000 cubic feet of gas available. A heat content of 850 B.T.U. is guaranteed for the natural gas, whereas the manufactured gas supplied by the Minneapolis company has 550 B.T.U. according to the city gas inspector.

Data on Selling of Utility Stocks Is Demanded

GOVERNOR Floyd B. Olson has called upon the state commissioner of securities for complete information concerning sales of stock in Minnesota by the American Commonwealths Power Corporation of Delaware, which is related to the Minneapolis Gas Light Company. This action is said to have followed complaints from Minneapolis residents who claim that while they supposed they were purchasing stock of the Minneapolis Gas Light Company, they actually received stock of the American Commonwealths Power Corporation which went into receivership December 31, 1931. The sales were made through offices of the Minneapolis Gas Light Company.

It was pointed out by the governor that while stock of the parent company is exempt from examination before sale in the state because listed on a recognized stock exchange, the Minnesota commissioner has power under the terms of a measure enacted by the 1931 legislature temporarily or permanently to stop the sale of any such exempt stock in the state.

The governor stated that at a conference with persons affiliated with the companies in question, he was assured by them that the owners of the controlling stock in the Minneapolis Gas Light Company were consciously mindful of their public relations duty and that they would be able to remedy the situation.

New York

Therm Basis for Gas Rate Billing Is Proposed

THE public service commission is investigating a proposal by the Syracuse Lighting Company for a new scale of rates for gas and the substitution of the therm or heat unit basis of billing for that of cubic feet or volume now in use. Commissioner Neal Brewster, in announcing a hearing in New York city, is quoted in the Syracuse *Post-Standard* as stating:

"The cubic foot basis of charges is in universal use in New York state and the change proposed makes it desirable that the full membership of the commission hear the statements and contentions of the witnesses.

The outcome of the Syracuse case is awaited with interest by public utility corporations and others interested in public utilities. The thermal basis has been adopted in some of the other states, but apparently the Syracuse Company is the pioneer in New York.

This company, it is said, will mix natural gas with a heat content of something over 1,000 B.T.U. with artificial or coal gas and the mixture will be about 875 B.T.U. as against the 537 required at present.

Ohio

Cleveland's Fight for Gas Rate Reduction to Be Started

THE public utilities commission is soon to start hearings on a petition by the Cleveland council for a reduction of the gas rate by 10 cents per thousand cubic feet. Although there is a difference of opinion as to the advisability of an appraisal, it is declared by some that the present is most advantageous to the city for a revaluation from a standpoint of reproduction costs that figure in a gas rate computation. Furthermore, it is stated that the commission has decided points in the Columbus gas rate case that are favorable to Cleveland.

In 1930 the Ohio Supreme Court denied the East Ohio Gas Company the right to shut off the gas. A study of rate schedules was then started and the 10-cent reduction was proposed by city officials.

Commission Approval of Utility Merger Is Asked

THE public utilities commission has been asked to approve the purchase by the Ohio Electric Company of twelve other companies having an aggregate value of $20,064,408. The value of the Ohio Electric is given as more than $4,000,000. The properties which it is sought to merge with the Ohio Electric and the proposed purchase prices, as reported in the *United States Daily*, are as follows:

"The Columbus, Delaware & Marion Electric Company (all properties except the interurban railway and its facilities), $8,373,430; the Mt. Gilead Water, Light, Heat & Power Company, $123,150; the Morrow Public Service Company, Cardington, $160,830; the General Utilities Company, operating in several localities, $556,666; the Ohio Northern Public Service Company, Bowling Green, $1,114,362; the Western Reserve Power & Light Company, Cleveland, $707,069; the New London Power Company, New London, $215,861; the City Water Company, Bowling Green, $406,161; the Buckeye Public Service Company, $1,016,964; the Ashville Light & Power Company, $122,831; the West Jefferson Power & Light Company, $201,578; the Reserve Power & Light Company, Cleveland, $2,599,539."

The Ohio Electric seeks authority to issue $11,000,000 worth of 30-year 6 per cent bonds to be sold at 90; 56,800 shares of $6 no-par preferred stock to be sold at $90 per share and accrued dividends; and 505,241 shares of no-par stock to be sold at $10, in order to finance the merger.

Columbus Gas Rate Supported in City's Brief

AN answering brief on appeal of the Columbus Gas & Fuel Company before the public utilities commission has been filed by the city to sustain the 40-cent rate contended for and to oppose an increase in the existing 48-cent rate for gas.

It is alleged that the 40-cent rate would show a 6 per cent return to the local company as well as to the Ohio Fuel Gas Company, which supplies gas wholesale. The company's claim of $600,000 for going concern value is attacked. At present the local company is paying 45 cents by contract which was substituted for a former contract embodying a 31-cent city gate rate. The company claims that this rate should be 61 cents in order to insure a profit to the Ohio Fuel. The city contends that the city gate rate should be only 26 cents to insure the Ohio Fuel a 6 per cent return on its property.

An alleged shortage of gas is described in the city's brief as "the bogy with which to frighten poor consumers and to force them to hide their heads while the meters merrily clicked."

Oklahoma

Warning Is Issued against Adjustment Agencies

PUBLIC utility companies in Oklahoma and their customers have been warned by the corporation commission against so-called "adjustment" agencies and bureaus, which are making contracts with customers of utility companies on the basis of 50 per cent for claims such as meter deposits, which are due on definite dates in the future. This warning is carried in a journal entry of the commission dated February 4th.

The attention of the commission had been called to these practices, which are said to have been attempted or carried out in several cities and towns of the state. In its journal entry the commission says in part:

"It further appears to the commission that contracts on such basis for claims which are being paid regularly to patrons, or which are certain to be paid to customers, are little short of extortion, and, on their face, unconscionable. The commission further finds that the utilities should be warned that the payment of 50 per cent, or any such unreasonable amount, or any illegal amount, to such persons or agencies should be at their peril and that they should expect to make restitution to the customers of the utilities for any illegal amounts paid to such persons or agencies. It is ordered that this matter be docketed and that any so-called 'adjustment' agency, or bureau, or any person who may be aggrieved hereby or interested herein, may on application to this commission be heard formally, at a public hearing, at which all other interested persons may have opportunity to be present."

Hand-set Charges Questioned

THE corporation commission on January 27th heard the application of Clarence Tankersley of Shawnee for an adjustment of charges made by the Southwestern Bell Telephone Company for telephone service

outside the initial rate area of Shawnee, and also for adjustment of hand-set charges.

The commission at the request of the telephone company deferred further hearing on the application applying to hand sets until March 14th when a general hearing will be conducted on this subject. Telephone company representatives suggested that the matter was of statewide importance and should be considered in a general hearing.

South Carolina

Governor Urges Passage of New Regulatory Law

GOVERNOR Ibra C. Blackwood in a special message to the legislature has urged the passage of a law proposed by the Power Rate Investigating Committee giving the corporation commission authority over electric utilities. The *United States Daily* says:

"He also recommended that means be provided whereby the South Carolina Railroad Commission may coöperate with the North Carolina Corporation Commission in making a joint appraisal of the properties of the electric utilities that serve both states, to the end that a proper basis may be laid for the fixing of rates.

"Governor Blackwood declared that it is fundamentally important for the state to supervise and regulate the utilities.

"'We have reached that juncture in the history of regulation,' he said, 'when the states should assert sovereignty over their creatures or by inaction this sovereignty will be exercised by the Federal government.

"'Thoughtful individuals, as never before, are reaching the conclusion that the state should regulate its own affairs under the power given it by the Constitution. If we would avoid the centralization of power in the Federal government and reserve unto the state those powers and privileges that rightfully belong to the state, we should exercise our regulatory power.'

"The governor agreed with the recommendation of the committee that the kilowatt-hour tax on electricity should be amended to provide for its application at the point of sale and to eliminate the levy on exported power. He also endorsed the other recommendations of the committee and asserted that the report is 'a valuable and instructive document.'"

Mayors and representatives of several municipalities on February 1st met for the purpose of discussing the suggested electric rate power regulatory act, and according to the Columbia *State*, they objected to certain features, particularly to those features which regulate the rates that municipalities are to charge for power. Following this meeting, the joint judiciary committees of the legislature, says the Columbia *Record*, struck out clauses authorizing the commission to regulate municipal plant rates.

Texas

Houston Raises Water Rate and Bans Free Service

THE Houston city council on January 20th voted to increase the water rate 5 cents to make it 20 cents per thousand gallons for domestic consumers. The city is also to make a standby service charge for all industries served by private wells. A service charge of 50 cents for each domestic consumer has been put forward but opposition was so strong that it was disapproved.

Public and private schools and all charity institutions which heretofore have been getting water free will be charged at the same rate levied against other consumers and payment of the bills will be demanded, the council decided. The city has moved to collect all delinquent water bills.

San Antonio Telephone Hearings Are Completed

FINAL hearings in the San Antonio rate controversy involving the Southwestern Bell Telephone Company were reached on January 23rd in proceedings before Special Master in Chancery Joseph B. Dibrell. Judge Dibrell will make his report to the Federal district court on the question whether the city's rate-regulating ordinance should be set aside and the company allowed permanently to increase rates 25 to 33⅓ per cent.

The Latest Utility Rulings

Arkansas Voters Fix Their Own Gas Rates

IN states where particular utilities are not regulated, the utilities themselves have a certain amount of discretion in fixing their own rates, subject to franchises or contractual obligations. In states where utilities are subject to commission regulation, it is the commission that exercises this power. Arkansas, however, seems to be unique in reposing the power to fix utility rates in the people themselves in the first instance. This unusual result is brought about by the operation of Arkansas referendum laws which provide that any measure passed by a municipal council may, upon the filing of a petition signed by a sufficient number of citizens, be submitted to the voters for approval.

Prior to 1930, the Southern Cities Distributing Company was bound by a franchise to serve gas in Texarkana county, Arkansas, for specified rates. During that year they petitioned the city council for authority to increase rates. After hearing the city council passed a resolution authorizing a rate increase for the company. Whereupon, certain citizens obtained a sufficient number of signatures to file a petition requesting that the action of the city council be submitted on referendum to the voters. The city council refused to submit the question for a number of reasons, including alleged defects in the petition. The supreme court of Arkansas, as a result of this refusal, has recently affirmed the granting of a writ of mandamus to compel the submission of the question to the voters of Texarkana. In this way, the citizens of that city will be given the opportunity of deciding for themselves whether or not they care to have an increase in rates for gas. *Southern Cities Distributing Co. No. 37, 44 S. W. (2d) 362.*

Fluctuating Commodity Prices Should Not Affect Utility Earnings

IT is fairly well established that commodity prices of structural equipment and of other materials that go to make up a utility plant have been steadily falling. If reproduction cost alone were the criterion of a utility's rate base, we would have a proportionate fall in the rate-making valuation of various utility properties, but commissions have frequently reiterated that reproduction cost is not the sole factor to be taken into consideration in fixing public utility rates.

This was brought out in a rather interesting manner by a recent opinion of the Alabama commission in dismissing a complaint brought by Mr. J. Q. Smith, a citizen of Birmingham, against what he deemed to be excessive rates for house-heating service charged by the Birmingham Gas Company. Mr. Smith pointed out the sharp decline in commodity prices especially during the last few months, and felt that there should be a corresponding decrease in customer rates. But the commission refused to go along with Mr. Smith's reasoning. The commission held to the effect that declining commodity prices are not of themselves a sufficient basis for a reduction in public utility rates, in view of the fact that utility business is controlled by a commission and restrained during prosperous times from realizing higher profits which they might earn if their businesses were not so regulated. Having been thus restricted during boom

times, the commission felt that the utility ought not to be subjected to the full and naked blow of adverse economic conditions. The commission held that it is in the interest of the public that the rates of public utilities should not be subject to sharp fluctuation resulting from the fluctuating of commodity prices which are incident to private business. It was observed that a check on utility earnings during periods of high prices, with a corresponding protection of utility earnings during periods of low prices, has a tendency to produce a constancy of utility earnings, which is reflected in the greater stability of public service. *Smith v. Birmingham Gas Co. Docket 6243.*

Another Montana Street Railway System Is Abandoned

A STREET railway system serving the city of Missoula has been permitted to abandon service, notwithstanding a most economical management, where it was shown that patronage averages less than 5 per cent of the population and a continued decline was indicated. It was also shown that the cost of rehabilitating the service which would be in the near future in the interest of public service and public safety would be prohibitive. The company operating the system also operates light, heat, power, and water service. Protestants against the street railway abandonment urged that the return to the company from its joint utility operations was not unreasonable. The commission held, however, that a continuation of the unprofitable operation of the street railway service would not be justified where the various utility services were not being conducted under a unified or consolidated franchise. Abandonment prior to the expiration of the street railway franchise was held to be justified, in view of the fact that the franchise was permissive and not contractual. *Re Montana Power Co. Docket No. 1236, No. 1622.*

Canadian Principles for Regulating Utility Rates Follow the American Practice

THERE have been a number of decisions by Canadian courts and regulatory bodies in the Dominion which seem to indicate that the Canadian practice in fixing utility rates depends upon the value of the service to the consumer rather than upon the value of the property devoted to public service.

On the surface this seems to be a pronounced departure from the American practice. The Supreme Court of the United States as long ago as 1898, in Smyth *v.* Ames, abandoned the idea that charges for utility service could be based upon what such services were worth to the consumer. A busy merchant, for example, might be willing to pay as high as a thousand dollars a month for his telephone if he had to do so. That would be the worth of telephone service to him. But the fixing of utility rates on such a basis would necessarily involve much guesswork.

Yet this would seem to be the required criterion, according to a rule laid down by a New Brunswick court in the case of King *v.* Public Utility Commissioners Ex Parte Moncton Tramways Electricity & Gas Company, 53 N. B. R. 469, where it was held that the reasonableness of rates charged by a public utility depends "upon the value of the service rendered and not upon the profits of the company."

A recent decision of the New Brunswick Board of Public Utility Commissioners, however, which was apparently the result of the court holding, indicates that the Canadian understanding of the

expression "value of the service" differs from the usual understanding of that term by the regulatory profession in the United States. In fixing electric rates for the city of Moncton, the board conceded that such rates should be based upon the value of service, but added this significant remark in its opinion:

> "But the board is of the opinion that the purpose of this case differs from that last recited case and that the only way by which the value of the service can be ascertained in a case of this kind is by examining the company's records, its capital account and income, and all elements that should be considered in establishing a proper rate base upon which the company is to be allowed to base its earnings."

We find, therefore, that "value of the service" in Canada is simply another way of saying the "value of the property devoted to public service, plus proper operating allowances and a fair return. Accordingly, the New Brunswick commission held that the electrical utility was entitled to fair operating expenses with a proper allowance for depreciation to keep its capital intact, and allowances for taxes and a reasonable return on the value of the property employed for public use. In ascertaining this value the board held that the rate base should include the value of the utility's (1) physical assets, (2) constructional overhead and other indirect costs, (3) working capital, (4) going value. Upon this rate base the commission fixed rates calculated to yield a return of 8 per cent. *City of Moncton v. Moncton Tramways Electricity & Gas Co., Ltd.*

Discount for Prompt Payment Preferred to Penalty Clause In New York

PRIOR to 1931, electric consumers in Buffalo were allowed a discount of one per cent per kilowatt hour upon the first block of current consumed during the month, where the bill was paid within ten days of its rendition. Subsequent to that year, however, the company put into effect a rule imposing a penalty of 10 per cent upon the amount due where bills were not paid within the 10-day period. Upon investigation on its own motion, the New York commission has disapproved of the charge. Commissioner Burritt's opinion explains the position of the commission on the subject as follows:

> "The experience of this commission is that the 10 per cent penalty clause in the rules and regulations of public utilities is a source of many more complaints than is the discount for prompt payment. Complaints as to the practice of charging penalties have come to this commission for relief. We find that the practice of this company in making a penalty charge for failure to pay bills promptly is not in accordance with the best approved business practice; that it is a source of irritation and of dissatisfaction to customers; and that it is unjust and unreasonable. It is believed that where bills can be collected with reasonable promptness, there should be neither penalty nor discount. This should be left for the company to determine, however. But if the company decides to make a different rate for the prompt payment of a bill, the bills should be computed at gross rates and a discount allowed for prompt payment. Such discounts should also be graduated according to the amount of the bill and should not exceed 10 per cent for small bills, or one per cent for very large bills."

Re Buffalo General Electric Co. Case No. 6833.

Alabama Landlords May Not Resell Current to Housekeeping Tenants

A SHARP line of distinction has been drawn by the Alabama commission between housekeeping and non-housekeeping tenants in settling the

troublesome question of the right of landlords in that state to resell electric energy purchased at wholesale rates through a master meter. It appeared that the Birmingham Electric Company established sometime ago in its rate schedule a classification known as schedule "H" which permitted the purchase of current for light and power service at wholesale rates by property owners, subject to the restriction that it should not be resold or shared without the written consent of the utility.

Under this schedule a number of clubs and hotels received service but apartment house owners or the operators of residential hotels, where tenants were permitted to do housekeeping, were served under schedule "Q" which required that rates for housekeeping tenants should be paid on a comparable basis with rates for service charged against housekeepers in other types of residences. Since the business depression set in, however, a number of apartment house operators in Birmingham have endeavored to keep their properties filled with tenants by renting rooms to lodgers and transients on part of the premises. Such operators recently applied to the commission for authority to be served under schedule "H." The commission agreed that in so far as electric service was sold to apartments designed for transient guests, the schedule "H" rate ought to be applied to such premises, but that as to the service to that part of the premises devoted to housekeeping apartments, the schedule "Q" rate should apply as heretofore. *Re Altamont Apartments et al. Docket 6195.*

Other Important Rulings

THE Iowa Supreme Court has held that a long-distance telephone company is required neither by common law nor statutory law to extend physical connection to a local exchange, notwithstanding the fact that it has extended similar service by voluntary contract to a competitive local exchange. The court held that the duty of a utility to furnish service to the public does not require it to extend service also to an applicant for service who is engaged in a competitive line of business. *Iowa ex rel. Fletcher v. Northwestern Bell Telephone Co. (Iowa Sup. Ct.).*

Although it conceded that the use of meters was the only equitable way of measuring service for water utilities, the Idaho commission recently rejected an application of a privately owned water utility for authority to place into effect meter rates to supersede flat rates for service in the city of Wallace, in view of the severe economic depression presently existing in that mining district. The commission was of the opinion that the installation of such meters at this time would be prohibitively expensive. *Re Public Utilities Consolidated Corp. (Ida.) Case No. F-777, Order No. 1294.*

The Provincial Motor Carrier Board of New Brunswick, Canada, has adopted the legal principles laid down by the apparent weight of regulatory authority in the United States to the effect that a carrier should be permitted to abandon an unprofitable part of its service where its operations as a whole are unprofitable. The particular case involved a petition by a bus line operating between Saint John and Gondola Point (Kings county). The petitioner proved that its entire operations were at a loss and that the particular branch which it proposed to abandon had contributed more than 50 per cent to the deficit. *Re Saint John Motor Line, Ltd. (N. B.)*

The Alabama Supreme Court has held that a city served by an electrical utility which has consolidated with two other utilities, one of which is serving